

AMERICAN EXPANSION,
THEN AND NOW
GORDON S. WOOD

GOP DEFICIT HAWKS,
NOW AND THEN
PETER BEINART

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THE NEW REPUBLIC

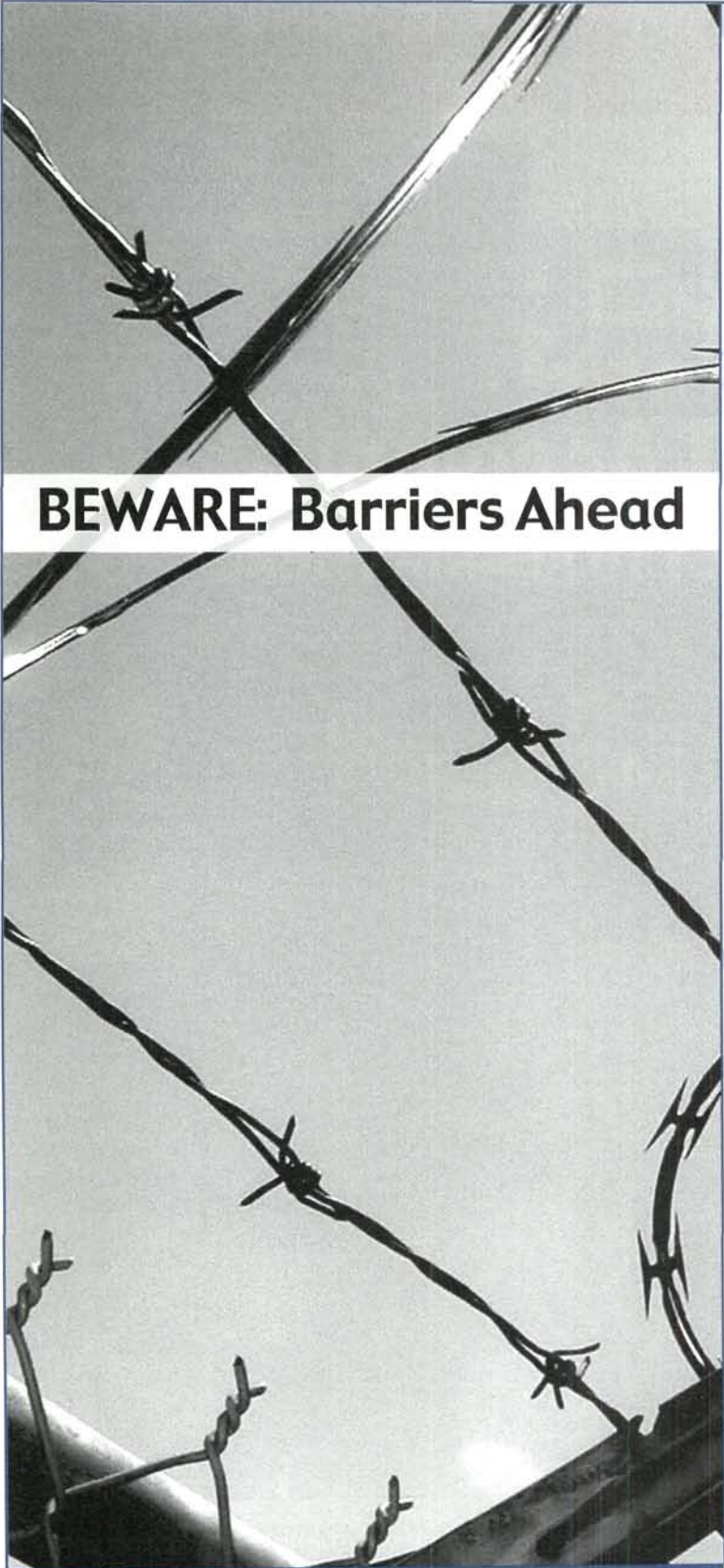
Mission NOT Accomplished BUSH PREPARES TO ABANDON IRAQ

LAWRENCE F. KAPLAN HASSAN FATTAH THE EDITORS

MISSION ACCOMPLISHED

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(866) 259-3800

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COVER STORY

The Editors

7 Mission Incomplete If we won't stay in Iraq long enough to build democracy, why did we fight the war?

Hassan Fattah

16 Baghdad Dispatch: Beirut Redux

The good news is Iraq has lots of political parties. The bad news is they are armed and girding for civil war.

Lawrence F. Kaplan

18 Early Exit The Bush administration's competing factions have united around one disastrous idea: Withdraw American troops fast.

POLITICS & THE WORLD

4 CORRESPONDENCE Why do college students drink? &c.

Peter Beinart

6 TRB | Unbalanced Republicans flip-flop on the deficit. Again.

8 NOTEBOOK What on earth is happening in Texas? &c.

Clay Risen

10 Understudies Are Democrats ignoring the lower courts?

Michael Levi

11 Uncontainable

Why Bush can't stop North Korea from selling nukes.

Eli F. Lake

14 Few Good Men

The United States searches (and searches) for Syrian liberals.

Jeffrey Rosen

19 Privacy Pleas Why the courts don't protect civil liberties when it matters most. And Congress does.

Joshua Hammer

38 BAGHDAD DIARIST | Oasis

BOOKS & THE ARTS

Stanley Kauffmann

22 FILMS | Surprises *The Dancer Upstairs*, John Malkovich's directorial debut, is disappointing; *Blue Car*, Karen Moncrieff's first feature, is not.

Robert Brustein

24 THEATER | Time After Time Square A tale of three imports: *Life (x) 3*, *The Play What I Wrote*, and *Così Fan Tutte*.

Gordon S. Wood

26 Sale of the Century *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America* by Jon Kukla

Christopher S. Wood

31 The Unmodern Modern *The Preference for the Primitive: Episodes in the History of Western Taste and Art* by E.H. Gombrich

Feyza Marouf

34 POEM | Orpheus

David Thomson

35 Fields of Dreams *W.C. Fields: A Biography* by James Curtis

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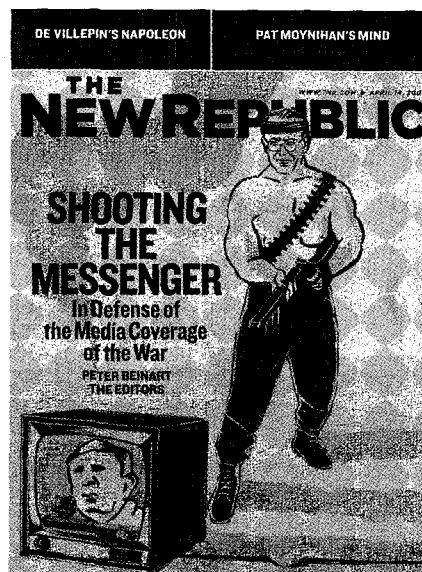
CORRESPONDENCE

INEBRIATED

CASS R. SUNSTEIN REASONABLY captures part of the problem of college-student drinking, but he misses critical aspects of its complexity ("Sober Lemmings," April 14). While the good news may be that alcohol use can be reduced by education about real versus perceived norms, the bad news is that those abusing alcohol regularly and excessively in college-student culture. College students roughly mirror society: 20 to 30 percent consume about 70 to 80 percent of the alcohol. Students affected by social norms are the 70 percent consuming at most 30 percent of the alcohol.

What Sunstein further does not address is that the alcoholic-beverage industry is a not-inconsequential player in this drama. They use their muscle (read: dollars) to attack other research, such as that of Henry Wechsler and his Harvard School of Public Health data, mentioned in passing by Sunstein, which concludes that more than 40 percent of college students are binge drinkers. The industry wants to bury the binge-drinker concept. And they have latched onto social norms as their Trojan horse of support. They claim Wechsler's binge threshold—five or more drinks (four for females) on two occasions in a two-week period—is much too low and therefore sensationalistic. But let's suppose for a moment that we "liberalize" the definition of "bingeing" to four or five such occasions in a two-week period. Interestingly, and not surprisingly, we end up with about the 20 percent of students who are the true hard core. These are the drinkers on whom the industry relies for its financial success and where-withal. And these students are unlikely to be reached by anything other than proven interventions employed with addicts and those nearly addicted, an approach that must complement social norms.

Worse, the industry's efforts are primarily responsible for splintering the "field" of college alcohol and other drug-abuse prevention and education into two major camps: the advocates of social norms and the devotees of Wechsler's binge drinking. The alcoholic-beverage industry does this by heavily supporting organizations and individuals who promote and advocate many of the social-



norms projects (not to my knowledge H. Wesley Perkins and Alan Berkowitz however). It is a classic divide-and-conquer strategy, and it is working. And it is this that should speak volumes.

STEPHEN J. NELSON
*Research Associate
Education Department
Brown University
Providence, Rhode Island*

PRIVILEGED ACCESS

WHETHER OR NOT THE SENATE has occasionally had access in the past to a few memoranda written by attorneys in the solicitor general's office, supporters of both political parties, or neither party, should recognize that the Democratic senators' present blanket demand for all of Miguel Estrada's memoranda is unreasonable and unwise (Michael Crowley, "Private Opinion," April 7). I wrote hundreds of similar memos when I was an attorney at the solicitor general's office (1994–2002). Those memos are, and should be, fully protected by attorney-client privilege. The memos are

intended to give the solicitor general a thorough and candid evaluation of the legal merits of a case. They usually provide a road map of the government's legal theories. Often they contain frank, and even unflattering, descriptions of the government's own position—as well as positions taken by other parties, other agencies within the government, and even judges.

This candor is essential to ensure that the solicitor general gets the most thorough evaluation of a case. If these memos, and others like them, are disclosed outside the government, government attorneys will inevitably become less thorough and candid in their legal evaluations cases. Policy-makers at the Justice Department will be less well-informed. All of us would be poorer as a result; for, whatever our politics, we all suffer when government officials exercise judgment without full information.

PAUL WOLFSON
Washington, D.C.

MULTIPLE PERSONALITY

LAWRENCE F. KAPLAN'S ARTICLE "Preoccupied" suffers from at least one glaring inconsistency (April 7). The first part of the article evokes Prime Minister Tony Blair and Secretary of State Colin Powell's wish for the United Nations to play a central role in the reconstruction of Iraq. Kaplan goes on to suggest that the international body might not promote democracy as effectively as Britain and the United States alone, citing one major precedent of failure (Kosovo) and deftly refusing to consider the far more numerous U.S. analogues. Kaplan concludes that, no matter how effective the United Nations could be, "they're not the ones fighting this war." But Blair and Powell are fighting the war, and they endorse multilateralism. Maybe Kaplan's implied "we" is not collective at all but royal.

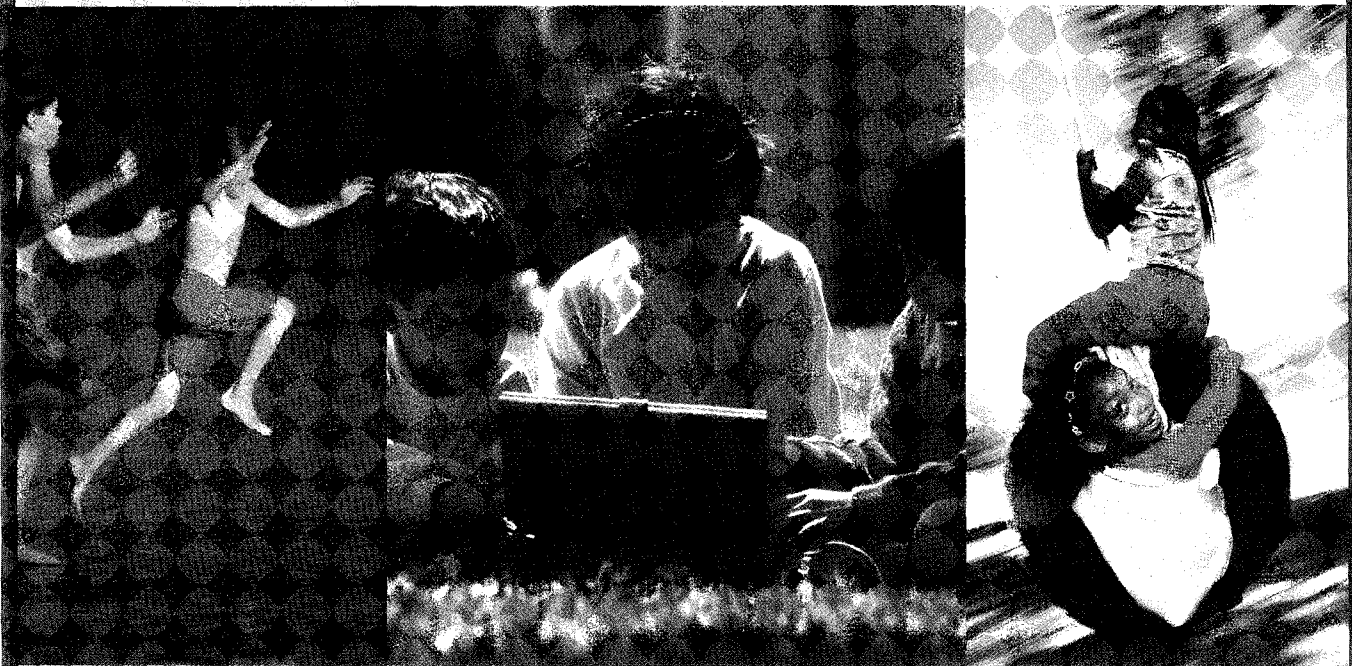
ALEXANDER HICKOX
New York, New York

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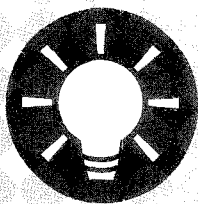
Electricity & Clean Air Today & Tomorrow.



Kids today are part of the most energy-intensive generation in history. They demand lots of electricity. And they deserve clean air.

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barrels of oil every year.*

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Unbalanced

ON MARCH 4, 1997, the Senate voted on a resolution amending the U.S. Constitution to require a balanced budget every year. Every one of the Senate's 55 Republicans voted yes, and the bill garnered 66 votes in favor versus only 34 against. But, as a constitutional amendment, it required two-thirds support. And so it was defeated—having come up just one vote shy.

A month later, Republican Senator Orrin Hatch of Utah took to the pages of *Roll Call* to vent his frustration. The Republican Congress, he wrote, had made a balanced budget amendment “our first priority” because “continued deficits would devastate future generations.” And the congressional GOP would never abandon the struggle. “For our nation’s economic strength and sovereignty, and for our children and grandchildren,” he wrote, “the proponents of a balanced budget amendment will be back again and again. As long as it takes.”

Last week, *THE NEW REPUBLIC* called Senator Hatch to ask whether he still supports a balanced budget amendment. A couple of years ago, the question might have seemed of merely theoretical interest—after all, when George W. Bush took office in January 2001, the budget was not only balanced, it was hundreds of billions of dollars in surplus. But, this April, the Congressional Budget Office (CBO) projected that the federal government would end the year \$408 billion in deficit. Hatch’s insistence that only a constitutional requirement could keep Congress and the White House from “spending our national inheritance” seemed relevant once again. But, despite repeated calls, Senator Hatch’s press office didn’t answer *TNR*’s question.

Here’s one explanation why. On March 26, Hatch did something rather strange for someone dedicated to balancing the budget every year: He voted to cut taxes by \$350 billion. (He had hoped to vote for the far larger \$726 billion cut proposed by the president, but Senate moderates whittled it down.) According to the CBO, that proposed tax cut, if passed along with the rest of the Bush budget, would produce deficits of \$1.8 trillion over the next decade.

Hatch wasn’t alone: 50 out of 51 Senate Republicans and 218 of 229 House Republicans voted this spring for tax cuts that



forecasters predict will plunge the nation deep into the red. This despite the fact that, in 1997, every Senate Republican and 223 out of 226 House Republicans voted for a balanced budget amendment. A comparison of the two sets of votes shows that a grand total of one Republican senator (John McCain) and four Republican representatives (Michael Castle, Amo Houghton, Jim Nussle, and Jim Leach) see a contradiction between a constitutional amendment requiring a balanced budget and tax cuts that make one virtually inconceivable for years, if not decades, to come.

How does the congressional GOP reconcile this apparent contradiction? The 1997 balanced budget amendment did include escape clauses. For instance, Congress can waive it if the United States “is engaged in military conflict which causes an imminent and serious military threat to national security.” That makes sense—the war on terrorism and the war in Iraq make it unrealistic to balance the budget in the next year or two. But the wartime exception is designed to allow temporary deficits that occur *as a result of war*. Using it to pass a permanent tax cut that makes a balanced budget impossible even once military conflict has ceased doesn’t exactly fit the spirit of the law.

The amendment can also be waived with a three-fifths vote of both chambers of Congress. That presumably allows legislators to boost a weak economy by cutting taxes or increasing spending, even if a temporary deficit ensues. But that would argue for temporary tax cuts, which stimulate the economy immediately and then phase out. Bush’s are permanent, and the CBO, headed by the former chief economist at Bush’s Council of Economic Advisers, predicts they will have little short-term economic effect. Indeed, as Dana Milbank and Dan Balz of *The Washington Post* reported last week, the Bush administration hopes to cut taxes every year it is in office, whether the economy needs a

boost or not. How do you square that with a constitutional mandate that the budget be balanced every year?

You don’t. The truth is that congressional Republicans don’t primarily care about balancing the budget or stimulating the economy. They care about reducing the size of government. When Republicans set the agenda in Washington, in the 1980s and again today, they pass tax cuts they know will produce huge deficits. And, when Democrats are in power, as in the 1990s, Republicans decide deficits are horrible and foment public revulsion to pressure Democrats to cut the size of government.

You can’t really blame Republicans for wanting smaller government; it’s what they sincerely believe. But you can blame them for pursuing it so dishonestly. The deficit bait and switch, after all, is designed to forever cloak the GOP’s true intentions. Republicans suspect, probably correctly, that, if they confront government spending head-on, they’ll lose. In the mid-’90s, for instance, the Gingrich Congress succeeded in cutting welfare, food stamps, and other programs designed for the poor. But, when they went after Medicare, education, and the environment, spending that benefits the middle class, they got clobbered.

It’s middle-class entitlements, however, such as Medicare and Social Security, which make the federal government so big (and so popular). And the GOP’s only hope of undermining them is to create a fiscal crisis so huge that now-unpopular Republican solutions, such as privatizing Social Security and turning Medicare into a voucher program, become politically feasible. In roughly a decade, when multiple Bush tax cuts and an enormous defense buildup run smack into the baby-boom retirement, they might just get their wish.

So don’t be surprised if, several years from now, with the United States trillions of dollars in debt and Bush out of office, congressional Republicans recover their passion for fiscal discipline. In fact, some in the GOP are already preparing. Ninety-seven House Republicans have this year co-sponsored another—you guessed it—balanced budget amendment. Are they worried such an amendment could undermine the Bush administration’s agenda of perennial, budget-busting tax cuts? Not at all. Coincidentally, the amendment can’t take effect until December 31, 2008.

PETER BEINART

Mission Incomplete

THIS MAGAZINE BELIEVED, and believes, in the war against Saddam Hussein. The destruction of Iraqi tyranny and the creation of Iraqi democracy are potentially revolutionary events, audacious responses to a moral horror that degraded and threatened the Middle East. The fighting is now done, and it was stunning. But, even as it glories in the military attainment of Operation Iraqi Freedom, the Bush administration is scanting the

political attainment it promised would go along with it.

In the coming months, the Bush team plans a swift and drastic reduction of our forces, to diminish our presence in Iraq from the 130,000 troops we have there now to 30,000 troops by the fall. The bad joke is that 130,000 troops are themselves insufficient for what we must still accomplish. The administration's plan is nothing less than a retreat from historical responsibility, a scandal.

Three reasons, after all, were offered for this war: weapons of mass destruction, terrorism, and democracy. So far we have found no weapons of mass destruction in Iraq. More disturbing, Bush officials are suggesting we may never find them and withdrawing some of the inspectors who were sent to look. As for Iraq's links to terrorism, the evidence was always weak, and a month of American occupation has not made them stronger. That leaves democracy, the genuinely stirring attempt to establish a liberal order in an Arab country. This involves more than a restoration of order on the streets. Anarchy is only the first obstacle to the democratization of this Baathist state with a theocratically stimulated Shia population. Nobody who hates authoritarianism and worries about the parlous nature of Middle Eastern politics can object to this American objective; but the impatience of the Bush administration to withdraw to the margins of the country it has just conquered does not bode well for

the cause of freedom in the desert.

Why is the administration so keen to thin us out when the press keeps reporting that we are already too thin to protect a terrified people (see "Beirut Redux," page 16)? The reasons are not clear. Is it a fear of further American casualties? Perhaps the president is getting a case of his father's cold feet: Just as Operation Desert Storm ended prematurely by leaving Saddam in place, Operation Iraqi Freedom could end prematurely by not putting democratic institutions in place. Or are we "drawing down" because we are afraid of looking like imperialists? Such sensitivity would be exceedingly odd in an administration that is so ferociously indifferent to the opinion of the world. And surely a country that cannot wait to be done with the foreign entanglement for which it defied most of the world cannot in any strict sense be called imperialist.

"Americans do everything fairly quickly," a senior American official told *The Washington Post* on April 21, in connection with the administration's plan for postwar Iraq. He was right: The United States has a severe case of HADD, or historical attention deficit disorder. Empires are not built on such inconstancy, but neither are democracies.

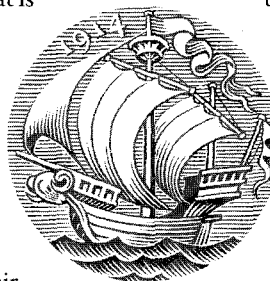
Or is the new American timidity about the deployment of our soldiers just

another outburst of Rumsfeldism? The secretary of defense tried to fight the Iraq war in accordance with his digital religion, his dogmatic insistence upon the increasing irrelevance of large masses of land forces in an era of high-tech aircraft and satellites, as if the ground could be held from the air. The chaos that is now bewildering American authorities in Baghdad is partly the result of Donald Rumsfeld's refusal to provide for an impressive and intimidating American presence in the streets. The escape of Osama bin Laden across the hills of southern Pakistan in the late days of the war in Afghanistan was also a consequence of the Pentagon's refusal to deploy American troops. Welcome back to Tora Bora.

The important point is this: Whether we like it or not, the future of Iraq is now an American responsibility. And that responsibility will not end because the newspapers move on to other stories, or the American troops want to go home, or the occupation is costing too much, or conservatives want to declare victory and move on to tax cuts and Syria. You do not rain shock and awe on a place and then lose interest in it. This is not to say we must rule Iraq; but we must control it while it sorts out the complicated task of ruling itself, and that

will take far longer than six months. This may sound like "ugly American" cynicism, but the real cynics are those who would have us congratulate the Iraqis on their liberation and then get our soldiers out of harm's way while Baghdad becomes Beirut and Basra becomes Tehran. They are the ones

who have lost faith in American power. And the bizarre thing is that only yesterday they were the most fervent advocates of American power, and the moral ends to which it can be put. If we are not committed to staying in Iraq long enough so that its brutalized people have a decent shot at liberal government when we leave, why did we fight this war in the first place? ■



NOTEBOOK

BUSH'S LONE PARTY STATE . . . GRAHAM'S LONELY CONSPIRACY THEORY

DIVIDER

IT SEEMS LIKE ONLY YESTERDAY that presidential candidate George W. Bush was declaring himself a "uniter, not a divider" and promising to "change the tone in Washington." Exhibit A for the paradise of bipartisan comity that would ensue if he were elected was his home state of Texas. In fact, after the Supreme Court decision that ensured his election, Bush gave his victory speech in the chamber of the Texas House of Representatives, where, to great fanfare, he was introduced by Democrat Pete Laney, then the speaker of the Democrat-controlled body.

So why has Laney spent days this week holed up at a Holiday Inn in Ardmore, Oklahoma, hiding out from Texas Rangers sent by Bush's handpicked gubernatorial successor, Rick Perry? Laney, along with about 50 Democratic colleagues, was forced to flee the state in order to deprive the legislature of a quorum, because this was the only way they could stop the newly Republican-controlled statehouse from ramming through a redistricting plan designed to cut down the number of Democrats Texas voters elect to the U.S. House of Representatives. House Majority Leader Tom DeLay, the architect of the plan, has been explicit on this point: "Texas sends more Democrats than Republicans to Congress. We're trying to change that." The GOP plan would not only force the state to undergo redistricting just two years after its last, census-mandated redistricting—something that, except in court-mandated cases, no state has done in at least 50 years—but its pro-GOP gerrymanders are nothing short of comical. (One Austin district snakes narrowly all the way to the Mexican border, 300 miles away.) Following the Democratic walkout, Texas Republicans involved state troopers, Texas Rangers, and the Special Crimes unit in efforts to "apprehend" the absent legislators. Current Texas House Speaker Tom Craddick even asked for



George W. Bush

(and received) the assistance of the Air and Marine Interdiction and Coordination Center—a federal agency located in California and under the auspices of the Department of Homeland Security—to track a plane owned by his predecessor, Laney. DeLay, meanwhile, encouraged involvement by the FBI, which unlike state authorities would be able to arrest the Democrats in Ardmore.

In other words, it wasn't the benevolent presence of Bush that created bipartisan comity in Texas; it was institutional checks on GOP power at the state, and possibly federal, level. Not a bad lesson for the rest of the nation to ponder.

SNOW JOB

IN 1995, JOHN SNOW, THEN THE CEO of CSX, declared, "The budget deficit puts a hole in the pocket of every American every day of their lives. It threatens the very foundation of our culture, and we must seize and act upon this historic opportunity to solve this, the

most pressing issue facing the country." Today, Snow serves as Treasury secretary for an administration that is considerably less concerned about deficits (see TRB, "Unbalanced," page 6). Last Sunday, when Snow appeared on NBC's "Meet the Press," host Tim Russert repeated his 1995 quote to him. Oh no, Snow responded, that was totally different. "In 1995, Tim, the deficit was on track to rise in absolute-dollar terms and as a percent of GDP," he replied. "That's the important point, 'as a percentage of GDP.' And it was high in 1995, as a percent of GDP, and no prospect for coming down." Which might make sense except that, in 1995, the budget deficit was 2.2 percent of GDP. This year, it is projected to reach somewhere around 3.8 percent and could easily reach 4.6 percent—more than twice its 1995 level. And what about Snow's claim that it had "no prospect for coming down"? Well, in 1995, the deficit *already had* fallen by nearly half over the previous three years; three years later, it would be gone altogether, giving way to massive surpluses. Unfortunately, the policies Snow is now shilling for will ensure that we're not so lucky this time around.

FISCAL MALPRACTICE

SPEAKING OF TAX CUTS, SENATE Majority Leader Bill Frist has come up with a medical metaphor to justify the president's latest plan. "Our tax cuts do affect the deficit in the short term," he told *The New York Times*, "but in the mid-to long term, the economy grows, tax revenues increase and jobs are created. The medicine that we have to take in the short term is an increase in the deficit. But the future benefit far outweighs the short-term pain." Perhaps it's fortunate that Frist no longer practices medicine, for he has it exactly backward: Analyses by both the Congressional Budget Office and the Joint Tax Committee show that tax cuts help the economy a tiny bit in the short run, when they stimulate some ex-

tra spending, but actually *hurt* it in the long run by increasing deficits. Which is why the usual metaphor has "taking your medicine" to be equivalent to *reducing* the deficit, not the other way around. And, if handing out tax cuts is Frist's idea of short-term pain, we can only assume that makes him a masochist.

GRAHAM CRACKERS?

ALTHOUGH SOME AMERICANS believe the Bush administration has engaged in a cover-up of the circumstances leading up to the September 11 terrorist attacks, they are generally confined to the extreme left of the polity. But, over the weekend, Florida Senator Bob Graham—a man who, in his current presidential bid, has touted himself as coming from the "electable wing of the Democratic Party"—lent his very respected voice to that chorus. Appearing on CBS's "Face the Nation," Graham, the former chairman of the Senate Intelligence Committee, accused the Bush administration of endangering Americans by blocking the release of a congressional report on the government failures that preceded September 11. "By continuing to classify that information so that it's not available to the American people, the American people have been denied important information for their own protection, for the protection of the communities," Graham said. "I think what they are shooting at is to cover up the failures

that occurred before September the eleventh [as well as] the failure to utilize the information that we have gained to avoid a future September the eleventh." Graham added, "I call that a cover-up." Either Graham has become unhinged, or perhaps there really is something to the charges that the Bush administration is covering up damaging information about September 11. Either way, shouldn't the press corps be trying to get to the bottom of this?

DEFINING LIBERALISM DOWN

ALAN COLMES FOR ONE, GRETA Van Susteren. You know, it's in the eye of the beholder, I guess." —Rupert Murdoch, when asked to name the "liberal commentators" on his Fox News Channel during congressional testimony, May 8

HOME NEWS

WE'RE PLEASED TO ANNOUNCE the launch of a new online feature, "The TNR Primary" (www.tnr.com/primary), devoted to daily commentary on the race for the Democratic presidential nomination. Beginning this week and extending through the presidential primaries, TNR writers are posting their opinions on developments in the primary fight and "grading" the leading candidates on their performances in a handful of policy and political categories. We encourage readers to log on to keep up with their favorite (or least favorite) contenders. ■

Inside the Box | Bruce Reed

BANK JOB Qusay Hussein took \$1 billion in cash from Iraq's central bank. Bush reaction: "What sets democracy apart is that we want to give *every* rich person the chance to do that."



REVOLVING DOOR Bush sacks Jay Garner and American team in Baghdad. Ari's spin: "This proves once again the administration's deep commitment to regime change."

DRY HOLE White House asks United Nations to give United States control over Iraqi oil and revenue: "We didn't want the war to be over oil, but we couldn't find anything else."

VIRTUES ANONYMOUS Bennett says he'll give up gambling: "I'm not a compulsive hypocrite—I can quit anytime I want!"

BLADE RUNNER OMB Chief Daniels leaves to run for governor in Indiana: "How hard can it be to run a state when you've shown you can bankrupt a country?"

PARTY ON Gillespie, top choice for National Committee chair, is top-billing lobbyist: "That way there's no conflict of interest."

WHERE THE BEEF IS Gary Hart decides not to run for president: "I can explain letting myself be photographed with Donna Rice but not with Al Sharpton."



FALL GUYS Bush moves Council of Economic Advisers off White House grounds: "Don't let the recession hit you on the way out!"

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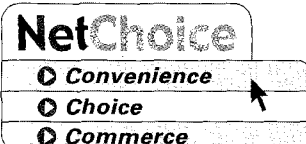
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Bush packs the lower courts. Understudies

BY CLAY RISEN

THIS JANUARY, THE Bush administration nominated James Leon Holmes, a Little Rock lawyer, to sit on Arkansas's Eastern District Court. On April 10, however, Holmes's nomination was delayed indefinitely in the Judiciary Committee after a group of Democrats, along with moderate Republican Arlen Specter, balked at his religious-right provenance. (As the former president of Arkansas Right to Life and a longtime anti-abortion activist, Holmes had authored articles arguing that "the woman is to place herself under the authority of the man" and comparing the pro-choice movement to Nazi Germany.) In an almost unprecedented move, on May 1, Republicans sent Holmes to the Senate floor without the Judiciary Committee's imprimatur.

Ultimately, though, what makes Holmes an anomaly among President Bush's district court nominees is neither his far-right provenance nor the fact that he has made it to the Senate floor. What's anomalous about Holmes is that Democrats slowed his nomination down at all, even temporarily. While Democratic senators have waged a few high-profile battles over Bush's nominees to higher courts—for instance, Miguel Estrada, Priscilla Owen, and Charles Pickering—they have put up little resistance to the administration's steady politicization of the lower federal courts. "What has been noticed at the appellate level is also happening at the district court level," says one aide to a member of the Senate Judiciary Committee. "It's just no one pays attention."

District courts are the lowest and most numerous in the federal judicial system, and as such they are often deemed politically irrelevant—concerned with, as one staffer to a member of the Judiciary Committee puts it, "making widgets." But those widgets are the building blocks of much of U.S. law. Because, in most instances, district courts are the first courts to hear a case, they set the tone for later appeals. "District courts make, in most cases, the most important decisions and the decisions that appellate courts defer to," says Peter Rubin, a lawyer and president of the American Constitution Society. "Should we verify a class action, should we grant summary judgment—and that's the end of the case for a lot of people." District courts can also provide political cover for more conservative judges at the appellate and Supreme Court level by reducing the chances that those courts will be forced to reverse decisions. "One of the problems," says Michael Gerhardt, a professor at the William and Mary School of Law, "is, if you don't take ideology into account in the lower-court nominations, then your higher judges are forced to reverse more often."

In Louisiana, for example, a recent Bush appointee to the

Eastern District Court, Jay Zainey—who was unanimously confirmed by the Senate last year despite a record as an anti-abortion activist—ruled against a woman who claims she was denied access to abortion services while in prison. The woman, known to the court as Victoria W., had been sent to prison for a parole violation and soon after learned from the prison doctor that she was pregnant. She requested an abortion but was denied; by the time of her release, it was too late to obtain one. Victoria W. contacted a lawyer and filed suit in federal court, and the case came before Zainey in April 2002. Zainey dismissed the case in a three-page order, refusing even to hear it. The decision was unprecedented. "No federal court in the country," said Victoria W.'s lawyer, Linda Rosenthal, "has ever held constitutional a prison policy that intentionally obstructed a prisoner's right to terminate her pregnancy." Victoria W. is appealing the verdict, but that appeal will be heard by the U.S. Court of Appeals for the Fifth Circuit, which is already overwhelmingly conservative and will only grow more so if Bush succeeds in placing Owen and Pickering on it. By making a controversial ruling at the district level, Zainey gives the higher-profile appellate court room to uphold his ruling while avoiding the taint of right-wing judicial activism.

The flip side works as well. A recent ruling by Sam Haddon, a Bush appointee in Montana, in favor of an oil- and natural-gas-exploration company accused of violating the Clean Water Act (CWA) was overturned in April by the U.S. Court of Appeals for the Ninth Circuit. In doing so, the appeals court expanded the CWA's list of pollutants and opened up the possibility of further suits—which reinforces its image as an excessively liberal bench. And, paradoxically, Haddon's ruling, which experts say represents an almost unprecedentedly narrow interpretation of the CWA, will likely receive much less public scrutiny because it took place at the district level.

Another reason district court benches matter is that they serve as "farm teams" for higher courts. Because appellate nominees who come from the district courts have federal judiciary experience, district courts make excellent places to cultivate future appellate court nominees and to park potentially controversial nominees. Take William Steele. An Alabama magistrate judge, he was nominated in 2001 to the U.S. Court of Appeals for the Eleventh Circuit. But he soon came under withering fire from a bevy of civil rights groups, who charged him with "racial insensitivity" in a number of anti-discrimination suits. His nomination was withdrawn, but, in January, Bush nominated him to Alabama's Southern District Court; he was confirmed by voice vote in March. After a few years building a federal judicial record at the district level, he could be an almost unstoppable appellate court nominee.

So far, the administration has filled 100 district court seats, and, while most of the nominations have not been controversial, as a whole they have been at least as ideologically oriented as the more high-profile names at the appellate level. On the list is Paul Cassell, confirmed to the Utah District Court in May 2002, who previously led a campaign to overturn the Supreme Court's landmark *Miranda* ruling; Michael Mills, a Mississippi nominee known for his anti-abortion views while

on the state supreme court; and Nebraska's Laurie Smith Camp, who has been an outspoken abortion-rights opponent. Another frequently cited appointment is that of Ron Clark, who recently began his judgeship on Texas's Eastern District Court. As a member of the Texas House of Representatives, Clark put forward a series of bills to limit access to reproductive-health services, including placing zoning restrictions on clinics and instituting mandatory 24-hour waiting periods. Despite his record on abortion and his lack of judicial experience, he was approved by a voice vote in October 2002. However, Clark was also running for reelection to the narrowly divided Texas House, and, if he had immediately accepted the administration's appointment, he would have likely ceded the closely contested race to a Democrat. So, with Bush's blessing, Clark refused the appointment until after the election—winning and then promptly resigning, an unheard of step that blurs the line between the White House's political interests and its duty to promote an independent judiciary.

THERE IS NO formal requirement for how the president nominates district court nominees; nevertheless, there are traditional checks and balances that have evolved over the last 50 years, practices that are being either rewritten or discarded by the administration. These include ignoring state judicial nominating committees, rejecting American Bar Association ratings, placing Justice Department political appointees in positions related to judicial selection, and refusing to cooperate with home-state senators. Says one former Justice staffer, "They have systematically ignored bipartisan commissions [and] ignored traditions of consultation that were in place when we got there and have been in place for years in order to make these ideological appointments and political rewards for jobs well done."

Bush has come under especially heavy fire for ignoring home-state senators when making his judicial picks, reversing a tradition that had held since the Eisenhower administration. In the past, administrations have either allowed senators from a district's state to make nominations or have given them broad sway in the selection, even when the senators are both from the opposing party. Several states have even organized bipartisan nominating committees in an attempt to institutionalize this coordination. But, in a number of instances—in Washington, Hawaii, Wisconsin, and Florida among others—the administration has ignored both the senators and, in many cases, the commissions. In the case of Florida's Southern District Court, the White House not only overlooked nominees put forward by the state's Judicial Nominating Commission, it also rebuffed concerns about the process from Democratic Senators Bob Graham and Bill Nelson. Both senators criticized the administration publicly for going ahead with its own nominee, Cecilia Altonaga (though, neither voted against her when she was confirmed on May 6). "It's a stunning lack of consultation with the home-state senators," says one former Justice staffer. "For years, there was fabulous cooperation between the senators in Florida no matter what the party. . . . We had no trouble filling Florida judgeships with very qualified,

nonpolitical people, and [Bush] just ripped it up."

Democrats, for their part, say they are so busy fighting at the appellate level that a number of controversial nominees have slipped through virtually unopposed. "The groups on the progressive side of the House are battling this furiously, but there just aren't enough resources," says a former Justice Department official. Even many nominees who should have been controversial slipped through. As an example, several Democratic staffers cite John Bates, whom Bush appointed to the D.C. District Court. A former independent counsel's office lawyer under Kenneth Starr, Bates was nominated to the court in June 2001 and received unanimous Senate approval in December of that year. Soon after coming to the bench, he was assigned to hear *Walker v. Cheney*, in which the General Accounting Office (GAO) sued the vice president for access to documents detailing meetings with energy-industry officials. In December, Bates ruled against the GAO. That ruling, in addition to effectively closing off public inquiry into the energy task force, could have a disastrous long-term impact on congressional oversight of the executive branch. And it proves definitively that a district court judge can have a powerful impact on the nation's political and legal battles—something the Bush administration understands all too well. ■

North Korea's loose nukes. Uncontainable

BY MICHAEL LEVI

IF YOU'RE WORRIED that U.S. diplomacy with Pyongyang is heading nowhere, and you think attacking North Korea is unimaginable, the Bush administration has good news: President George W. Bush, in private comments reported May 5 in *The New York Times*, has indicated that the United States may shift its North Korea strategy away from both a military strike and from diplomacy and instead focus on containing Pyongyang's plutonium exports through means short of military attack. More emphatically, Secretary of State Colin Powell, responding to Tim Russert May 4 on NBC's "Meet the Press," declared that the United States would "absolutely not" allow North Korea to export plutonium, the key constituent of a nuclear bomb. Americans, it appears, can sleep easier.

Except they can't. The administration's new tack might appear soothing at first glance, but closer examination reveals it to be deeply disturbing. Indeed, President Bush should know what his scientific advisers have certainly deduced: Short of a diplomatic solution or a provocative and

Michael Levi is the Science and Technology fellow in Foreign Policy Studies at the Brookings Institution.

risky military action, it will be impossible to stop Pyongyang from exporting plutonium.

Given the destructive potential of even a single nuclear bomb—500,000 people dead in a midday New York City explosion is not an unreasonable estimate—an effective plutonium blockade must be airtight. A drug-interdiction scheme that stopped 90 percent of all drug shipments would be considered overwhelmingly successful; but a scheme that stopped 90 percent of North Korean plutonium transports would be an abject failure if the remaining 10 percent included enough plutonium for even a single nuclear bomb.

Unfortunately, plutonium is extremely difficult to detect. It emits little radioactivity—one could stand next to a weapon's worth of plutonium for weeks without becoming sick. Finding a grapefruit-sized ball of plutonium—about the amount needed for a basic nuclear weapon—requires that a detector be held within roughly 25 meters. Detection, then, cannot be done by satellite or even by reconnaissance aircraft operating off the Korean coast.

Indeed, according to a little-noticed report in late April in London's *Daily Telegraph*, the Pentagon is proposing up-close inspections of North Korean exports that would, in theory, ensure that all traffic leaving North Korea is plutonium- and missile-free while stopping short of a complete economic blockade. Administration officials see this selective blockade as a natural extension of last winter's joint Spanish-American police action in which a North Korean missile shipment was seized en route to Yemen. (The ultimate release of that shipment has no doubt left a bitter taste in the mouths of many administration officials, who would surely relish the opportunity to redress the weak image projected by the release.)

UNFORTUNATELY, SUCH INSPECTIONS are unlikely to work well enough. Consider what would be required to completely stop North Korean plutonium exports. Controlling land borders would be challenging but perhaps not impossible. At the tightly monitored South Korean border, radiation detectors could be set up at checkpoints for a moderate price. Controlling the Chinese border would be far more difficult. Illicit smuggling takes place regularly across the 780-mile border, meaning detectors could not be restricted to official checkpoints. Though the Chinese could conceivably halt and inspect every truck crossing the border, intercepting individuals would be much more difficult and could cost millions of dollars. In fact, rather than trying to search every individual, the Chinese would be better off installing upward of 10,000 radiation detectors. And 10,000 detectors is an *optimistic* estimate—it assumes the North Koreans would attempt plutonium shipments in weapon-sized batches. If Pyongyang divided its plutonium into chunks ten times smaller, three times as many detectors would be required. (Indeed, the detectors would be so tightly spaced that the physical barrier to would-be smugglers might prove as much a defense as the sophisticated radiation detection.) And, technical barriers notwithstanding, the political obstacles—in particular, se-

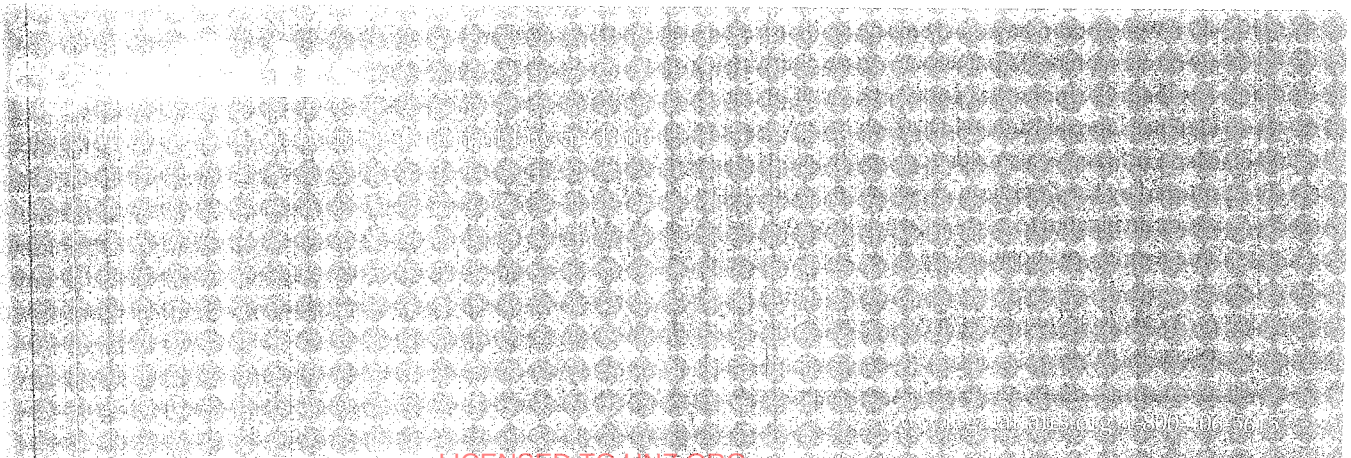
curing China's active cooperation—would be high, since Beijing thus far has been unwilling to take actions that would completely alienate Pyongyang.

Blocking sea-based smuggling would be less technically challenging but far more politically provocative. In contrast with the extreme difficulty of locating and inspecting every individual crossing the North Korea–China land border, identifying and searching every ship leaving North Korean waters would be relatively straightforward. Still, no technology would allow inspectors to certify North Korean ships as plutonium-free without first stopping, boarding, and carefully inspecting those vessels.

All of which leads to a major problem with the Bush administration's ostensible plan: It could easily provoke North Korean military action. A sea-based containment regime would be tantamount to a naval blockade, an action that North Korea has repeatedly stated would be treated as an act of war. The same problem would hold for air traffic. Though packages arriving in friendly countries could be scanned for plutonium, many shipments might be sent directly to hostile or uncooperative states such as Iran or Syria, where intrusive radiation scanning would be impossible. After all, North Korea is already known as one of the world's leading proliferators. It has allegedly sold ballistic-missile technology and other weapons, often shipping them by air, to unstable regimes such as Pakistan. By contrast, bundling a nuclear weapon's worth of plutonium with such a shipment would be trivial, and the United States would be effectively powerless to stop it. Indeed, the only way to prevent air shipments without North Korea's cooperation would be to shoot down every aircraft, military or civilian, leaving North Korean airspace. If boarding North Korean ships would be risky, imposing a flight moratorium by military force would be insane.

To be certain, some short-term stopgaps against plutonium exports would be prudent. The United States might accelerate installation of neutron detectors at our ports of entry, giving us a better chance to prevent plutonium leaked from North Korea from being delivered to a U.S. city. It should also make clear to Pyongyang that, if a bomb constructed from North Korean plutonium is detonated on U.S. soil, forensic experts may be able to identify its origin—allowing America to retaliate accordingly. The mere *possibility* that the United States could retaliate against an attack involving North Korean plutonium might be enough to deter Pyongyang from exporting it in the first place. These steps are no substitute for a comprehensive solution, but they would at least reduce our vulnerability without risking war.

ONE NEED NOT agree with North Korea's official news agency, the KCNA, which recently remarked that U.S. policy "can not be construed otherwise than ridiculous jargons of political imbeciles [sic]," to question the wisdom behind the administration's apparent move. By imposing a selective blockade, the administration seems to be attempting to walk a fine line, seeking to avoid the concessions necessary for a diplomatic



solution, the risks involved in a military attack, and the dangers of doing nothing. But it is chasing a dangerous fantasy. Indeed, an intrusive inspections regime runs military risks nearly as great as those of an attack on North Korea's plutonium plants while avoiding the benefits—near certainty that North Korea will be unable to export plutonium. And, unlike a potential diplomatic solution, a blockade will not deter eventual trade in highly enriched uranium, the other half of North Korea's nuclear program, since enriched uranium gives off less radiation than plutonium and thus is even harder for inspectors to detect. Indeed, according to a container-security study published last year by Stanford's Center for International Security and Cooperation, it would be nearly impossible for the United States to detect enriched-uranium imports into America.

Sadly, while the administration's approach appears new, it is conceptually familiar. When President Bush took office, he inherited precarious but promising negotiations over North Korean missiles initiated by the Clinton administration. Against the advice of many, Bush quickly abandoned the diplomatic track, falling back on the promise of a technologically immature missile defense. Today, the administration seems again to be preemptively preparing the nation for a diplomatic failure by brandishing the dubious promise of a cure-all defense. And, once again, that defense is an illusion. ■

The search for Syrian liberals. Few Good Men

BY ELI J. LAKE

IT SEEMED LIKE a match made in neocon heaven. Less than one week after the United States accused Syria of allowing terrorists to enter Iraq and Saddam Hussein's henchmen to leave it, Farid Ghadry informally unveiled his Reform Party of Syria. He used the occasion of the American Enterprise Institute's second to last weekly briefing on Iraq—a series the institute organized to coincide with the war—to go public with his opposition efforts. Ghadry—who plans to announce a Syrian government in exile in the coming months—asked the panel of Washington hawks, from the audience, the question on everyone's mind: "What about regime change for Syria?"

Ghadry's timing was good. The week before, Secretary of Defense Donald Rumsfeld had sent the White House a "Road Map for Syria"—over a dozen largely punitive policy options spurred by the Pentagon's assessment that American soldiers were endangered by Syria's open-border policy during the war. The memo's proposals, THE NEW REPUBLIC has learned, in-

clude docking an aircraft carrier within Syrian territorial waters, using proxies to undermine Syrian intelligence agents inside Lebanon, interdicting Iranian flights to Hezbollah positions in Lebanon, and sending American forces over the Syrian border in "hot pursuit" of senior Iraqi officials. Meanwhile, Congress was developing a set of new sanctions against Damascus that were tougher than the limited bans on weapons and other items the United States has already passed. Could there be a better moment for the Syrian Ahmed Chalabi to emerge?

Unfortunately, finding liberal dissidents with a base of support in Syria makes finding liberal dissidents with a base of support in Iraq look easy. The Syrian opposition is overwhelmingly populated by fundamentalists. And Syrian liberals have virtually no public profile outside of Washington.

THE SIMILARITIES BETWEEN Ghadry and Chalabi, co-founder of the Iraqi National Congress, seem striking. Ghadry, like Chalabi, has had his share of bad days in business. While Chalabi fled Jordan in 1989 after Petra Bank, which he set up, collapsed amidst allegations of financial fraud, Ghadry owned Hannibal's Coffee Co., a chain of American coffee shops that went bankrupt in 1996. Like Chalabi, Ghadry walks and talks the language of liberal democracy. His party's website boasts papers on reforming Syria's omnipresent security services, which are similar in some respects to Iraq's former Baath Party apparatus, and on establishing representative government. The Reform Party of Syria has even drafted a model constitution that would enshrine not only basic rights of speech, assembly, life, and property but also more idealistic goals, such as a pollution-free environment, fair labor practices, and access to health care. Ghadry also supports peace with Israel. "Why do we have to be enemies with our neighbor?" he asks, admitting that he has been impressed by Israel's democracy and vibrant civil society on business visits to the country. Ghadry, astonishingly enough, is even a member of the American Israel Public Affairs Committee.

Other anti-government exiles have started to emerge as well. On April 24, 120 Syrian exiles of all ideological stripes, ranging from communists to Alawite businessmen, signed an open letter in *Al-Hayat*, a leading Arab newspaper published in London, to Bashar Assad, calling on him to allow exiled dissidents to return to the country, to abolish military-type courts, and to dismantle part of the state's security services. "The Iraqi war proved the security services cannot defend the independence, sovereignty, and dignity of Syria," the letter said.

There are limited signs that reformers may be growing bolder within Syria as well. Prior to a crackdown in mid-2001 against civil society organizations, Syrians had been forming small groups that openly discussed politics, previously a rare occurrence. Some of that ferment remains. In a rare interview last month with Syrian reformers in Damascus, National Public Radio's Kate Seelye found several people willing to publicly speak out against the political repression pervading the country.

Eli J. Lake is the State Department correspondent for UNITED PRESS INTERNATIONAL.



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BUT, DESPITE THIS minor thaw, American officials are deeply pessimistic that Syria contains the type of leader the United States is looking for. "We have done nothing to cultivate or encourage . . . opposition [to Syria's regime] either abroad or in the country," says one Pentagon official. According to Frank Anderson, the CIA's former Near East Division chief, the United States "thought about changing governments in Iran, Iraq, and Libya, but in Syria we decided that none of the options were more attractive than the incumbents." In fact, several American officials knowledgeable about Syria say that Assad's most liberal opponents have no real political backing. For Syrian liberals to create "any meaningful political opposition is ridiculous," says a former American ambassador to Syria. After decades of being closely linked to Lebanon, say American officials, many Syrians have come to associate pro-Western liberals with Lebanese Christians, who many Syrians blame for oppressing Muslims in Lebanon and for being supported by Israel. Recognizing the Syrian liberals' lack of a power base, Rumsfeld's policy memo did not advocate seeking out Syrian exiles and dissidents for an opposition movement, as the Pentagon did in the West Bank and Gaza after the president's speech last June calling for a new Palestinian leadership. Nor did Rumsfeld's plan set aside funding for dissidents inside Syria, as Pentagon civilians advocate for the internal opponents of Iran's ruling mullahs.

Ghadry illustrates the point. His organization is only now getting off the ground. And a Syrian who belongs to one of Israel's main lobbying groups is not exactly a strong political candidate in a country that remains one of the most rabidly anti-Israel in the region. As Ghadry himself admits, "The Syrians are not ready for someone who wants to make peace with Israel."

Assad's most powerful opponent, admits one CIA consultant with extensive knowledge of Syria, is the theocratic Muslim Brotherhood. "The only opposition I know of in Syria is the Muslim Brotherhood," agrees former Assistant Secretary of Near Eastern Affairs Edward Walker. Indeed, according to Youssef M. Ibrahim, a former Middle East specialist at the Council on Foreign Relations, Assad has grown so fearful of the Brotherhood's ability to spread radical Islam that he has begun making speeches denigrating religious extremism and chastising Islamist-influenced medical schools for mixing science and Islam.

The Brotherhood—which Assad's father, Hafez, banned—are tough characters. In 1982, their Syrian branch launched a bloody intifada against the regime that included randomly assassinating members of the ruling elite. What's more, they churn out a steady stream of anti-Israel and anti-U.S. rhetoric. Even worse, *Newsweek* has reported that American and German investigators believe that members of the Syrian Muslim Brotherhood played critical roles in supporting and recruiting the Hamburg-based leaders of the Al Qaeda cells that carried out the September 11 attacks.

For the time being, Bush administration hawks want to further isolate Assad and thus pressure him to change. They believe this pressure will lead more Syrian dissidents to come out

of the woodwork. Secretary of State Colin Powell's recent visit to Damascus may underscore this strategy: By informing him that the United States could turn the screws on Syria, Powell offered Assad, like Yasir Arafat before last June's speech, a final opportunity to change. Unfortunately, if Assad does not come around, Washington may discover it cannot find anyone it likes to replace him. ■

Baghdad Dispatch Beirut Redux

BY HASSAN FATTAH

EVERY NIGHT FOR the past month, Mazen Al Bakir and his sister Layla have prepared themselves for the worst. Around 9 o'clock in the evening, the nightly security detail begins at their home in the southern Baghdad district of Saydiya. Bakir pulls a loaded pistol out of the closet, secures his front gate and doors with massive locks, and hides the keys. For the rest of the evening, the Bakirs stand guard at their home as sporadic gunfire from across their neighborhood ushers in another sleepless night in Iraq's capital.

The Bakirs' situation is hardly unique. Since the American takeover, Baghdad has turned into an Arab version of the Watts riots. Burning buildings dot the city skyline. Armed looters terrorize the population, tearing into homes and emptying them of their possessions. Petty crime has become rampant on the streets, virtually no one feels secure, and homes are never left unguarded at night.

The really scary part, however, may be yet to come. Thus far violence in Baghdad has been limited to unorganized gangs of looters carrying Kalashnikovs. But Iraqi security experts and other sources in the capital say that, under the nose of the American forces, Iraq's nascent political groups are forming armed militias and storing weapons as they prepare for a potential civil war for control of the country. In fact, *THE NEW REPUBLIC* has learned, several Iraqis say even Hezbollah has formed a branch in Baghdad. Ultimately, if Baghdad's power vacuum is not filled soon, the rise of organized armed factions could turn Iraq's capital into a twenty-first-century version of 1980s Beirut.

General insecurity and looting has been the norm in Baghdad almost since the first Saddam Hussein statue fell. With small arms easily available from former members of Saddam's military and security services, many Iraqis have armed themselves and begun cleaning out the homes of Baghdad's wealthy and middle class. Street crime was infrequent under Saddam, but today random rapes, carjackings, and murders have be-

Hassan Fattah, a frequent TNR contributor, is a journalist based in Baghdad.

come commonplace in many parts of the city, and as a result women have virtually disappeared from the streets. At Baghdad's Al Nouman Hospital, sources say 35 women who were raped and left for dead have been brought into the ward in recent weeks. Iraqis have become paranoid, reaching for their guns any time a suspicious-looking pedestrian passes in front of their homes. "This is not a normal life—you just can't continue like this," says Fadi, a young Kurdish man who lives in the Karrada section of Baghdad. Days earlier, Fadi had watched thieves hijack a car and then fight each other over it.

But, in recent days, Iraqi security experts, ranking members of several Iraqi political groups, and average Iraqis have told *TNR* that a greater danger than carjacking may be in the cards: inter-factional warfare. Since the fall of Saddam, more than 30 different political parties have established themselves in Baghdad, ranging from the Kurdish People's Front to the Supreme Council for the Islamic Revolution in Iraq (SCIRI), a theocratic group under the authority of newly returned Shia leader Mohammed Bakr Al Hakim. This should be a healthy sign. Except that, according to security sources, many of these parties have formed organized armed militias ranging in size from 500 men for Hizb Al Dawa, a leading theocratic Shia group, to more than 2,000 fighters for SCIRI, whose armed wing is called the Badr Brigade. SCIRI, like several of these organizations, allegedly received training for their militias from Iran's Revolutionary Guards. Even the long-repressed Iraqi Communist Party, led by aging Marxists, has supposedly set up a 600-man force.

Meanwhile, according to several security sources, even more dangerous groups may be setting up in Iraq. A group made up of former Baathists is attempting to constitute a militia of Saddam loyalists. And security sources in Baghdad say that Hezbollah, one of the most dangerous terrorist groups in the world, is forming an Iraqi branch. "If nothing is done, these guys may export their movement outside of here and Iraq could become a base of operations," says one security source in the capital.

The militias have already begun to roam unchecked throughout Baghdad—except within a security perimeter surrounding the area where the American troops and most foreign journalists stay—and many other parts of the country. Some Iraqis even accuse Iraqi National Congress (INC) leader Ahmed Chalabi of turning his Pentagon-backed Free Iraqi Forces, who currently number more than 500 armed men, into a militia and claim that Chalabi's organization has in recent days attempted to recruit more fighters at Baghdad's Al Mustansiriya University. (Chalabi's security chief insists that the INC has actually been downsizing the armed group as he begins recruiting locals to form an established political party.) In total, security experts say, thousands of men from these armed factions are now wandering the streets of Baghdad and other cities, where they are claiming certain neighborhoods as turf, an ominous flashback to Lebanon's civil war, in which various factions staked out areas of Beirut and killed members of other groups who strayed onto their ground. Indeed, in just a few days in Baghdad, I have heard

rampant rumors about the territoriality of these militias.

According to Iraqis, the militias have become prevalent in southern, Shia-dominated towns as well, while, in northern Iraq, Kurdish militias—the offspring of the Kurdish *pesh-merga* fighters who battled Saddam's army alongside American Special Forces—are defining their turf. Meanwhile, a Sunni Wahhabi party is said to have created an armed militia in Fal-luja, a town outside Baghdad.

Though the armed wings of political parties already possess small arms, security sources say they are storing heavier weapons around Baghdad and other cities. In fact, says Sadoun Dulaimi, a one-time high-ranking Baghdad police official who recently returned to Iraq after fleeing the country in 1991 when Saddam sentenced him to death, what makes the militias so dangerous is their access to heavy weaponry, such as rocket-propelled grenades. In the north, Kurdish militias have taken over former storehouses of Saddam's army and have allegedly been helping themselves to the contents. In Baghdad, security sources say that militias have stored sophisticated arms, taken from former Iraqi army troops, in hidden caches throughout the Shia stronghold of Sadr City (formerly known as Saddam City). Even tanks left around Baghdad by the retreating Iraqi army may have fallen into militias' hands. Ultimately, Iraqis fear, a Lebanon-style civil war could be in the offing. "Things keep snowballing, and, if they [the United States] don't control it, this will never end. This will only encourage a civil war," says former Judge Tariq Ali Saleh, who fled Iraq during Saddam's time but has returned to the country.

THOUGH THE UNITED STATES has vowed to find and destroy matériel left over by Saddam's army, it has taken few steps to seek out and disarm the militias. The long-planned cleanup of arms has only just begun, after many militias already helped themselves to Saddam's most sophisticated weapons. What's more, says Dulaimi, one of around 100 technocrats assembled by the Bush administration to plan Iraq's reconstruction, he urged Jay Garner and other American leaders not to allow Iraqi political parties to form for six months after the takeover. Yet the American occupation force has not stopped parties from developing and then arming. Dulaimi resigned his position two weeks ago in protest of U.S. policies.

In part, U.S. reluctance to take on the militias may be a product of the relative security of the part of Baghdad where most Americans are billeted. Though most of the capital remains highly unsafe, and militias are becoming increasingly prevalent, American officials and journalists do not often see the armed groups because they generally stay within the small area surrounding the U.S. compounds and the Palestine and Sheraton Hotels, an area protected by Abrams tanks and machine-gun-wielding soldiers. "The Third Infantry Division has provided a secure environment for Iraqis," insists U.S. Army spokesman Lieutenant Colonel Anthony Healy, standing in one of Saddam's former palaces. He must not have met Mazen Al Bakir. ■

Why the Bushies want out of Iraq. Early Exit

BY LAWRENCE F. KAPLAN

AT LONG LAST, the military brass, Defense Secretary Donald Rumsfeld, his civilian advisers at the Pentagon, and even the State Department agree about U.S. policy toward Iraq. They all support an administration plan that calls for a fairly rapid drawdown of American forces there: Whereas the United States currently has 130,000 troops in Iraq, by the fall it intends to have just 30,000.

Unfortunately, the plan is an enormous mistake. As America's soon-to-be former proconsul in Iraq, retired General Jay Garner, explained two weeks ago, "Before we begin the reconstruction successfully, we have to have security." And, as the experience of the last month has amply demonstrated, even 130,000 troops are barely enough to provide security in Iraq. A simple point, one might think. But not when one passes through the looking glass that is the U.S. occupation of Iraq—an occupation that, for reasons that have as much to do with political theology as with the particulars of Iraq, administration officials insist isn't really an occupation at all.

On the ground, American military commanders have shown little interest in employing their troops as a constabulary force. Operating under strict rules of engagement and orders that, according to Michael R. Gordon and Eric Schmitt of *The New York Times*, risk "leaving some areas of Iraq uncovered or with a minimal troop presence," the U.S. Army has hunkered down even as Iraq appears at times to be coming apart around it. And the military, in the person of Lieutenant General David McKiernan, the land component commander in Iraq, continues to have the most important say on security matters inside the country. McKiernan fully shares the reluctance to act like an occupying power of the civilians above him. "Ask yourself if you could secure all of California with 150,000 troops," McKiernan said last week. "The answer is no. The ultimate answer rests with Iraqis being in control of their country."

Fair enough. But the question isn't merely how many troops you have on the ground; it's what you do with them. "The real issue is the need for active security operations," says Michael Vickers, an ex-Special Forces officer and military analyst at the Center for Strategic and Budgetary Assessments, "and that's already clashing with the Army's culture of force protection." Indeed, some of the fateful decisions of recent weeks, among them the failure to prevent the looting of Baghdad's National Museum, were actually made by military commanders on the ground (and duly seconded by their civilian superiors).

The military, of course, takes its cues from the secretary of defense. And Donald Rumsfeld's message has been straight-

forward: Pack lightly—you won't be staying long. "The coalition has no intention of owning or running Iraq," Rumsfeld said two weeks ago, repeating exactly the phrase he had applied earlier to Afghanistan. Rumsfeld, needless to say, is no advocate of nation-building. As he explained in a February speech titled, appropriately enough, "Beyond Nation Building," "In some nation-building exercises, well-intentioned foreigners arrive on the scene, look at the problems, and say, 'Let's fix it.' . . . [W]hen foreigners come in with international solutions to local problems, if [they are] not very careful, they can create a dependency." Rumsfeld's "aversion to nation-building is instinctual, and Iraq is no exception," says one Bush adviser. "The view is, U.S. forces should be preparing for the next conflict, not cleaning up after the last."

Hence, the secretary of defense, who advised scaling back America's participation in multilateral peacekeeping operations in the Balkans and the Sinai and plans to shutter the Army's Peacekeeping Institute, now makes the remarkable case that the United States should scale back its participation in an *American* peacekeeping operation. Accordingly, he has recommended that American forces be pared down from five to one or two divisions within months, advised that foreign troops take their places in northern and southern Iraq, and proposed moving a sizable bulk of the U.S. contingent to remote Iraqi bases even sooner.

WHILE IT'S HARDLY surprising that the military brass and Rumsfeld would support a rapid troop withdrawal from Iraq, the idea is also strangely popular with the Pentagon's neoconservatives—who went into Iraq with the high-minded aim of building a democracy there. But assurances from Iraqi exiles, such as Iraqi National Congress leader Ahmed Chalabi, that Iraq would reconstitute itself quickly and in a manner congenial to the United States led Pentagon planners to underestimate the enormity of the task ahead of them. In fact, the Defense Department did not even begin postwar planning until late January. When, for example, Army Chief of Staff General Eric Shinseki told a Senate hearing in February that occupying Iraq would require hundreds of thousands of American troops, Deputy Secretary of Defense Paul Wolfowitz replied that the figure was "wildly off the mark." Postwar France, not Haiti, was the model.

Nor have the experiences of the last four weeks budged many Pentagon officials from this belief. Echoing Chalabi's contention that a lengthy occupation "is predicated on keeping Saddam's existing structures of government, administration, and security in place," they wish to diminish America's

“footprint”—and cede power to Iraqi exiles—as soon as possible. A prolonged U.S. occupation, they maintain, runs counter to the aim of Iraqi democracy and will surely turn Iraqis against their occupiers. “If there’s still a sizable U.S. presence a year from now,” one official said last month, “we will have failed.” Moreover, the speedy resolution of the war, after a first week of doom-and-gloom predictions from the media, has only bolstered their certainty that press reports of a security vacuum are overblown.

At the State Department, the situation is almost exactly the reverse. Before the war, State Department officials were outspoken in their belief that the United States would need to maintain a sizable troop presence in a post-Saddam Hussein Iraq. At a February Senate hearing, Undersecretary of State Marc Grossman predicted American forces might have to stay in Iraq for up to two years, and Colin Powell’s former Middle East point man, Anthony Zinni, said at the same hearing, “The idea that there’s an exit strategy or [that] we leave is naïve.” But State Department officials now claim these predictions mostly reflected reservations about the war itself.

With the war over, a diminished U.S. presence in Iraq suits Foggy Bottom just fine. Far from objecting to a drawdown, administration officials say that Powell, who is eager for a multi-

lateral force that would lend the occupation a measure of international legitimacy, and his subordinates, who fear the taint of imperialism in the Middle East even more than their counterparts at the Pentagon, support the idea of diminishing America’s visibility in Iraq.

This unanimity of opinion notwithstanding, the United States *is* an occupying power. Fortunately, the realization that a robust U.S. presence furthers rather than undermines the aim of a democratic Iraq has begun to penetrate at least one part of the Bush administration: the White House. Administration officials claim that both President Bush and Vice President Cheney recognized this week that the United States was in danger of forfeiting its historic achievement. To clean up what Rumsfeld terms Iraq’s “untidy” state of affairs, the administration has dispatched former diplomat L. Paul Bremer to replace Garner. Already, Bremer has taken useful steps to restore security—warning that looters will be shot and committing the United States to the “de-Baathification” of Iraq. Still, he is being superimposed on a plan for withdrawing troops that, if implemented, would leave him waving goodbye to the very forces on which he will depend. And, if that happens, the United States may have to wave goodbye to its vision of liberalism in the Arab world as well. ■

Why Congress is brave, and the courts aren’t. Privacy Pleas

BY JEFFREY ROSEN

SINCE SEPTEMBER 11, 2001, American courts have largely acquiesced to the Bush administration’s relentless demands for expanded surveillance authority in the domestic war on terrorism. Although a few lower-court decisions initially challenged George W. Bush and John Ashcroft’s efforts, many have been overturned on appeal. When the Foreign Intelligence Surveillance Court questioned the administration’s claim that the USA PATRIOT Act had torn down the wall between intelligence-gathering and law enforcement, for example, its decision was reversed by the Foreign Intelligence Surveillance Court of Review. In New Jersey, a demand for information on immigrant detainees was granted by a trial court but denied by the state appellate court. And, in March, the U.S. Court of Appeals for the D.C. Circuit held that the detainees at Guantanamo Bay couldn’t seek relief in U.S. courts; as aliens outside the United States, they weren’t entitled to due process. The most dramatic victory for civil libertarians was a decision by a trial court last year ordering the government to release the names of those detained in the September 11 investigation, but even that decision is being appealed, and its prospects are uncertain.

Luckily, this judicial deference has been offset by steely re-

solve from an unexpected quarter: the U.S. Congress. It is now obvious that, in the debate over domestic security, Congress has proved a far more vigorous defender of liberty and privacy than the courts.

In January, Congress unanimously barred funding for the data-mining project known as the Total Information Awareness Program unless the Defense Department submits a report to Congress on its effectiveness and impact on civil liberties—a report that is expected soon. At the end of April, the administration asked the Senate Intelligence Committee to give the CIA and the Pentagon broad new authority to obtain personal information on American citizens—including financial information, phone records, and e-mail logs. But the Intelligence Committee refused. Around the same time, Republican Senator Orrin Hatch of Utah—acting on the administration’s behalf—drafted a bill to make permanent the sweeping expansions of surveillance authority contained in the USA PATRIOT Act, many of which are due to expire in 2005. But, in the face of bipartisan resistance, Republicans agreed at the beginning of May to drop the proposal. When the administration proposed in exchange to expand its power to spy on “lone-wolf terrorists,” Republican Senator Charles Grassley and Democratic Senator Pat Leahy insisted on adding a

sunset provision. And the Bush administration continues to fend off congressional criticism of a leaked draft of a new domestic security bill, known as Patriot II, which would expand the government's power to conduct domestic surveillance even more dramatically than its predecessor. In the House, the Republican chair of the Judiciary Committee, James Sensenbrenner, has said that any expansion of the original act would take place over "my dead body."

WHY HAS CONGRESS proved better able to resist the passions of the moment than the supposedly dispassionate courts? The truth is that the vision of heroic judges bravely interposing themselves against popular opinion has always been a myth. As the Harvard political scientist Robert McCloskey argued in *The American Supreme Court*, his definitive study published in 1960, the courts throughout American history have tended to follow public opinion rather than to challenge it. "[P]ublic concurrence sets an outer boundary for judicial policy making," McCloskey observed. "[J]udicial ideas of the good society can never be too far removed from the popular ideas." In the nineteenth and twentieth centuries, the Supreme Court occasionally nudged or tugged at public opinion but more often than not was checked by it. Moreover, on the rare occasions when courts have challenged a deeply felt current in public opinion—in the *Dred Scott* case, which precipitated the Civil War, or in striking down progressive legislation, which precipitated the New Deal crisis—they have been forced to retreat in the face of a backlash from the political branches.

When it comes to the regulation of surveillance authority, courts are especially susceptible to the hydraulic pressures of public opinion. William Stuntz of Harvard Law School has argued that popular fears inevitably determine the degree of law enforcement authority that judges are willing to grant the police. "Most legal restrictions on policing date from the criminal procedure revolution of the 1960s, which itself can be seen as a consequence of the low-crime 1950s," Stuntz writes. "Higher crime rates led to cutbacks in those legal protections in the 1970s and 1980s, just as lower crime rates have led to some expansion in the past few years." To the degree that September 11 itself was a crime wave, he adds, it is only natural to expect judicial restrictions on law enforcement to contract again in the face of fears of terrorism. The idea that judges could be persuaded to move in the opposite direction contradicts everything we know about the historical relation between popular fears of crime and the judicial response.

The susceptibility of judges to public opinion is obvious from the flag-waving rhetoric that appears in many of the judicial opinions that have come down since September 11. "In an event forever seared upon the soul of America, members of the Al Qaeda terrorist group engaged in a quick series of attacks upon the United States on September 11, 2001, killing thousands of civilians in New York, northern Virginia, and Pennsylvania, with the intent to work even more crippling damage upon the country," the U.S. Court of Appeals for the



When it comes to regulating surveillance authority, the courts have been timid.

Ninth Circuit declared portentously (and unnecessarily) in a technical opinion holding that a group of clergymen had no standing to take on the detention of prisoners at Guantanamo Bay. "On September 11, 2001, our country was forever changed by the events at the World Trade Center, the Pentagon, and a solitary field in Pennsylvania," an Illinois district judge wrote in a similarly purple vein to shore up his conclusion that a commemorative prayer on the first anniversary of the attacks didn't offend the Constitution. "This day is etched in the collective memory of the country, if not the world, and continues to evoke strong patriotic, emotional, and psychological responses." "I was at a meeting of federal judges recently, talking about the war on terrorism," says James Dempsey of the Center for Democracy and Technology and a former House Judiciary Committee staffer, "and somebody made a plea about the need for judges to save us. One of the federal judges replied, 'Look, lifetime tenure isn't that important. We're human beings, and we don't like to be criticized.'"

Judges may be especially reluctant to take on the government in cases challenging surveillance and detention authority after September 11 for a number of reasons. Suspected terrorists are the least sympathetic of privacy victims, and judges are naturally concerned about setting free a dangerous individual who could go on to do terrible damage. For this reason, lower-court judges may be slightly bolder than appellate judges because they know they won't have the last word in any particular case. Appellate judges, by contrast, seem more cau-

tious because they know that the responsibility in the event of another attack will be entirely on their shoulders.

MOREOVER, EVEN IF a few judges could be persuaded to dissent from the historical pattern, it's not clear on what constitutional grounds they would stake their case. Constitutional doctrine, as it has evolved, provides remarkably few restrictions on surveillance technologies. During the twentieth century, judges held that the government has virtually unlimited access to personal data stored outside the home. Because of the traditional (and appropriate) deference to the executive in matters concerning national security and immigration, courts have little basis for challenging the president in these areas. The only area where constitutional doctrine consistently favors the individual is in cases involving the First Amendment, which is hardly central to the post-September 11 interrogations.

Because of the amorphous constitutional standards, Congress has tended to take the lead in regulating surveillance technologies while judges have struggled to keep up with a rapidly changing technological landscape. Since the '60s, Congress has passed more than a dozen important laws protecting privacy, ranging from Title III, the wiretapping statute, to the Foreign Intelligence Surveillance Act, regulating the surveillance of suspected agents of foreign powers. These laws have provided far more extensive privacy protections than those the Supreme Court said were constitutionally required. In the wiretapping act, for example, the Court said the Fourth Amendment only prohibited government eavesdropping; but Congress decided to regulate private snoopers as well. The regulation of e-mail privacy has followed a similar pattern: Congress passed a comprehensive law regulating e-mail privacy in 1986; nearly 20 years later, the courts still have not decided whether or how stored e-mail is regulated by the Constitution. "Congress has proven itself the most important branch of government in the area of privacy," writes the cyberspace scholar Orin Kerr of George Washington University. "Congress makes rules and acts prospectively, while the courts resolve disputes and act retroactively," agrees Marc Rotenberg of the Electronic Privacy Information Center. "When it comes to surveillance authority and information technology, in the modern era Congress has played a greater role in shaping future conduct than the courts have."

In the wake of Watergate and the Church Commission, which investigated the excesses of the CIA and FBI, libertarians on the right and civil libertarians on the left have formed a bipartisan constituency for privacy in Congress. "On the House Judiciary Committee in the 1990s, there was a real split between the bottom row and the top row," says Dempsey. "The top row included the Henry Hydes and Bill McCulloms, who were prepared to defer to the executive branch on issues of law enforcement and national security. The bottom row was more skeptical, more libertarian, more deeply affected by Waco and Ruby Ridge." Since the last election, the bottom row has been running the show in the House: Sensenbrenner

is a determined libertarian who has repeatedly made clear his opposition to the excesses of Ashcroftism.

But the defenders of privacy in Congress are no longer limited to the libertarian extremes. During the past year, a group of more moderate Republicans and Democrats on the Senate Judiciary Committee have taken on the administration for different reasons. In addition to Leahy and Russell Feingold—the most committed Democratic civil libertarians on the Senate Judiciary Committee—Ron Wyden, a slightly left-of-center Democrat, has emerged as a staunch advocate of privacy rights. Wyden is most responsible for the current restrictions on the Total Information Awareness Program and has raised questions about the Computer Assisted Passenger Pre-screening System. On the Republican side, Grassley joined Arlen Specter in complaining that the administration wasn't sufficiently forthcoming in answering Congress's questions about the implementation of the USA PATRIOT Act. Specter was particularly unhappy about the Justice Department's refusal to give the Judiciary Committee a lower court's secret decision about foreign intelligence surveillance authority at the time that it was issued. "To use the phrase 'privacy champion' about Grassley and Specter isn't crazy," says Rotenberg. "Both have expressed very serious concerns about excesses by the White House, and they are moderate Republicans, not deeply conservative libertarians."

Some of the concern about privacy in Congress reflects anger at the administration for having ignored the legislative branch's institutional prerogatives. By declaring that research for the Total Information Awareness Program had to end within 90 days unless the administration submitted a report to Congress, the House and Senate left the door open for research to continue as long as the administration kept them in the loop with "appropriate consultation," to use Congress's words. "Congress is most likely to exercise its rights when it feels like it hasn't been adequately consulted or when one of its powers is being invaded by the executive branch," says Dempsey. By offending the Hill with heavy-handed assertions of presidential prerogative, the administration has energized a bipartisan constituency to resist its excesses.

But the most important reason Congress has proved more willing than the courts to challenge Bush and Ashcroft is that, on the left and on the right, a principled, bipartisan libertarian constituency has emerged that is willing to defend privacy, even in the face of popular fears. This constituency has more freedom to assert itself now than it did in the immediate aftermath of September 11, and it would be sorely tested by another serious terrorist attack on U.S. soil. But, because of a combination of social forces that arose in the post-Watergate era—from increasing suspicion of the executive to increasing sophistication about the dangers of invasive technologies—the most popular branch of government has proved a more reliable defender of American liberties than the supposedly independent courts. Because American liberties have never endured in the face of determined opposition from the political branches, Congress's new assertiveness in checking the excesses of this president is an occasion for celebration and relief. ■

BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS Surprises

THE CREDITS FOR **THE DANCER UPSTAIRS** list John Malkovich as director, but when the film proceeds, this seems to be an error. Through his nineteen years as a screen actor, Malkovich has established himself as the doyen of idiosyncrasy. His range of roles has been extraordinary, and his treatment of them, from the ultra-simple (*Of Mice and Men*) to the bizarre (*In the Line of Fire*), has been uniquely his own. Whatever his success in a part, he seemed always to have chosen it because it was unlike anything he had done before. But in his directing debut, the overall effect is resemblance to films that others have already done.

Malkovich chose a story of political terrorism in Latin America, not exactly a fresh subject. In fact, only a few months ago another actor-turned-director, Robert Duvall, appeared in the comparable *Assassination Tango*. Duvall's film was set in Argentina; Malkovich's is set in an unnamed country, but the screenplay by Nicholas Shakespeare, adapted from his novel, is patently based on the story of Abimael Guzman, the leader of the Shining Path in Peru. Yet an odd trouble with Malkovich's picture is not familiarity of subject, nor that the script falls into the usual strophes for such a story—baffling terrorism, fruitless police action, quick and tidy resolution—but that the familiarity is itself muddled. Unlike some predecessors in the field, this screenplay seems constantly striving to get into focus, as if the print itself were being poorly projected. One instance: a brief prologue is supposed to have a bitter echo two hours later at the picture's conclusion, but that echo is dimmed through weak establishment at the start and weak resonance at the finish.

Many of the leading roles are only sketched, with a lazy reliance on the viewer's cooperation. "Oh, yes," we are supposed

to think, "the marmoreal police chief, the main detective's lukewarm marriage, his slightly unruly young assistant." The leading role, Agustin, does have some interest, an experienced man who is neither a bored cynic nor a frothing crime hound. He is a calm professional who does his police work

as he might do stockbrokerage. But even this role falters, partly because it lacks development, partly because the actor does not have the personality to compensate for that lack.

The casting in general is another disappointment in

Malkovich. He certainly knows a good deal about acting and about charisma. Yet in a leading role that calls for Benicio Del Toro or Antonio Banderas, he uses Javier Bardem, who is pleasant enough but very mild. Laura Morante, who plays the dancer of the title, is simply one more pretty woman doing obediently what she is supposed to do, without flavor or impact. The same scent of casting from a Rolodex hangs about all the actors. Malkovich has done considerable directing in the theater, but nothing in the acting here shows acuteness of choice or subtlety of touch.

As for the film's visual quality, very few compositions or patterns of movement are notably enhancing. The editing, credited to Mario Battistel but presumably supervised by the director, is generally ragged, ripping from one shot to the next and making the film seem hurried rather than swift.

There is worse. The fundamental flaw in the picture, beneath all the above, is that it has no sense of purpose. Malkovich says that he spent eight years trying to get it made, and the viewer looks for the reasons that made him so persistent. Surely it was not to make one more conventional Latin American political thriller. Perhaps Malkovich cared about two important themes that are present but left unexplored. First, what it is like to live in a programmatically

terrorized country. The violence in the film has no more effect on any of the people we see than a series of bodega robberies might have had. Second, a paradox—the pursuit of revolutionaries in an impoverished and corrupt country. The activists who want to improve society are pursued by police through immense slums that are sickening. (The exteriors were shot on location in Latin America.) One need not be a revolutionary to note the paradox: these policemen are hunting people who want to overthrow a government that ignores the very conditions through which the police are hunting. No one in *The Dancer Upstairs* has any awareness of this contradiction—or any hope for change without terrorism.

Besides its intrinsic pleasure, a new American film provides a small extra glow. Comment is plentiful these days about the trash that floods our screens. True enough, but this mourning overlooks—apparently enjoys overlooking—a contradiction. In addition to the occasional large-scale serious venture (*People I Know*, for instance), small-scale American films of real value keep popping up. Just in the last twelve months *Thirteen Conversations About One Thing*, *The Château*, and *Tully* came along. Now joining the list is **BLUE CAR**, written and directed by Karen Moncrieff.

This is Moncrieff's first feature, after some television work, and its subject is, once more, not fresh: the personal relationship between a teacher and an outstanding student. (*The Corn Is Green*, in 1945, couldn't have been the first such.) But, as against Malkovich's loll in the familiar, which seems merely a myopic production choice, Moncrieff's insistence on her subject suggests conviction—about her contribution and about her cast. Both beliefs are pretty much justified.

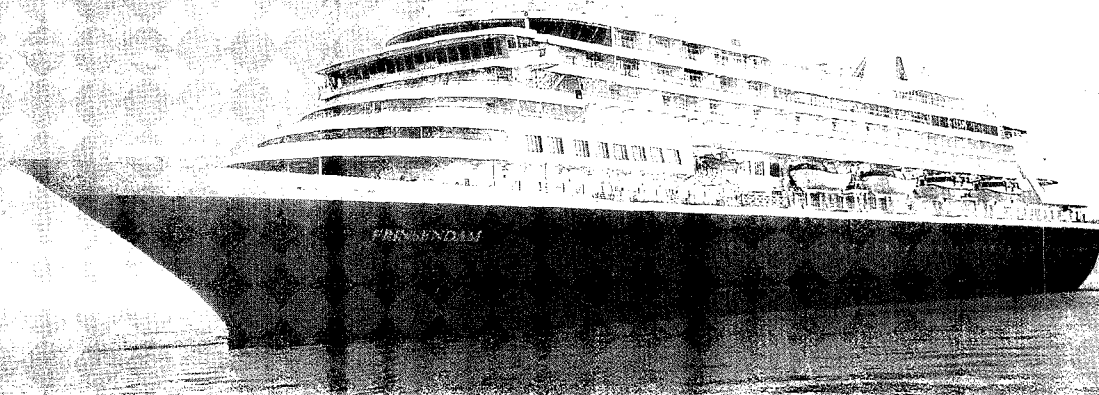
In an Ohio high school, Meg, seventeen, is in a writing class conducted by the middle-aged Mr. Auster. She shows glints of a genuine poetic gift. "Blue Car" is a poem about the car in which her father drove off from her mother, her sister, and herself. Auster's initial teacherly interest is soon colored by Meg's personal appeal, and the story's tension becomes double: Meg's struggle for the tempering of her mind and ambition, Auster's with his emotions. The juncture of these two conflicts

THE DANCER UPSTAIRS
(Fox Searchlight)

BLUE CAR
(Miramax)

C

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helps to reveal that Auster, who claims to be writing a novel, is in a way using Meg as a vicar.

All through *Blue Car* there is the faint (unfounded) suspicion that we are seeing a remake of some earlier film, but this feeling is almost offset by the honesty of the writing, especially the candor about Meg's home life, troubled by the worries of her harassed mother and her distraught younger sister. Especially the film is strengthened by the two leading performances. David Strathairn, who is Auster, is a known qual-

ity in the acting world, long considered an asset in that world—intelligent, taking, skillful. The surprise is the seventeen-year-old Agnes Bruckner as Meg. She presents an adolescent who has fold upon fold of complication in her life yet is not ready for the new complications. Bruckner doesn't quite sound the depths that the teenage Oksana Akinshina found in *Lilya 4-Ever*; but Bruckner's role involves only Meg, not the railings of society that Akinshina dealt with. About Bruckner's future it is possible—necessary—to hope. ■

ego. He exults in telling Henry that a couple of Mexicans have anticipated the findings of his unpublished life's work, "On the Flatness of Galaxy Halos," which will probably affect Henry's promotion to research director. As the two couples tear at these issues over an improvised dinner of Laughing Cow cheese and chocolate fingers, interrupted by the persistent demands of the young tyrant in the bedroom, the play shifts into a Gallic version of *Who's Afraid of Virginia Woolf?*, about the power plays, sexual and careerist, of over-educated professionals.

In one take, Hubert is making furtive moves on Sonia, which she reluctantly tolerates for the sake of her husband's advancement; in another, she warmly accepts Hubert's embraces and arranges for a tryst. In two episodes of the play Henry's career is doomed; in the third his results prove superior to those of his Mexican counterparts. Sometimes Inez is totally sloshed; sometimes she is sober. Sometimes the child is asleep; sometimes he is awake. Are these differences significant enough to strengthen an otherwise weightless play? Is it important that Sonia's costume changes from a bathrobe to pants and blouse and back to a bathrobe in the same time sequence? Does it matter whether the screaming child is given cookies or a slap on his bottom? Some form of avant-garde epistemology is obviously being attempted here, but what results is less a Cubistic form of theater than a Fauvist debate about bringing up baby.

The excellent cast, under Matthew Warchus's efficient direction, treats these minor shifts in focus as if they were major happenings, primarily by playing their parts in a state of blind, sometimes drunken fury. Turturro is particularly adept at reflecting Henry's wild mood swings from euphoria to depression and back again. He seems determined to galvanize the flaccid writing with his own grim, vibrato rage. And Hunt, looking like an irritated Meryl Streep, calculates precisely the rash adventurism of a bored housewife. Spinner as Henry's superior, having played a robot on *Star Trek*, is well trained to impersonate a man with a mechanical heart. And Emond, so penetrating as the Homebody in Tony Kushner's *Homebody/Kabul*, proves once again that few can touch her when it comes to metaphysical desperation. ("Above us, what is there?" she pleads. "Tell me there's not nothing.")

By the end of the evening, Hubert and Inez have gone home and the child is finally asleep, though not for long. The couple is

ROBERT BRUSTEIN ON THEATER Time After Time Square

A HIGHLY PRAISED SERIES called "Encores!" is responsible for producing unstaged revivals of vintage musicals at the City Center. But "Encores!" would be a better name for what's been happening in the commercial theater these days. Broadway has turned into Rerun Avenue, the main drag of Time After Time Square. Of the nineteen musicals adorning the New York stage at the moment, nine are revivals of golden oldies (*42nd Street* and *Man of La Mancha* among them), while eight are adaptations of forgettable movies (including *Thoroughly Modern Millie* and *Urban Cowboy*). Occasionally one or two of these reborns take on new life—notably *Chicago* and *The Producers*—but most of them are children of tired loins. How can Broadway lay claim to any freshness or originality when it functions in such a parasitical relationship to its own commercial past, not to mention other commercial media?

As for the straight plays on Broadway, a large number are British imports. An exception is **LIFE (x) 3**, which is a French import. This latest work by Yasmina Reza, the author of *Art*, displays the same lightweight approach to heavy subjects as its predecessor, which was about the three different ways in which three friends could look at an abstract all-white painting. Apparently Reza likes tripartite perspectives, because her new play is about three different ways of looking at a French foursome.

No, this isn't *Rashomon* in theatrical form—it's a middlebrow variant on Cubist aesthetics. In *Life (x) 3*, Reza seems to be looking for the Boulevard equivalent of a visit to the Louvre. But instead of elevating theater to the level of art, *Life (x) 3* lowers aesthetics to the status of a domestic anecdote.

The most successful realization of Reza's Cubist concept is Mark Thompson's design, a laser box rectangle enclosing a circular rug, a semi-circular couch, and a round glass table. In each of the play's three episodes, we look at this collection of furniture from a different angle, just as we are meant to see the play's events through the fractured optics of eight different eyes. The trouble is that the events (and the furniture) don't vary

enough to justify the repetition (or the stagehands' salaries). Henry (John Turturro) and Sonia (Helen Hunt) are a young married couple with a precocious six-year-old who won't go to sleep without a lot of coaxing. They disagree over whether the child should be allowed to eat munchies after he has been tucked into bed, and then over whether the treat should be a cookie or an apple. Things get a little more intense when another couple arrive for a dinner to which Henry and Sonia forgot that they were invited.

Hubert (Brent Spiner) is Henry's snotty professional superior; Inez (Linda Emond) is his penis-whipped wife. Inez is experiencing a major life crisis—a run in her pantyhose—while Hubert is suffering from a glanular enlargement of his already swollen

LIFE (x) 3
(Circle in the Square)

THE PLAY
WHAT I WROTE
(Lyceum Theater)

COSÌ FAN TUTTE
(BAM Harvey Theater)

left with the emptiness of their lives, and we are left with the emptiness of the play.

THE PLAY WHAT I WROTE would seem a curious choice for Mike Nichols and David Pugh to import from Britain. Although Morecambe and Wise, the television double act that inspired this comedy, were great British favorites in the 1970s, they were never particularly well known in this country. Also unknown to American audiences, at least until a few weeks ago, were Sean Foley and Hamish McColl, the two comics who materialize Morecambe and Wise on the stage without actually impersonating them. Morecambe and Wise worked together for over thirty years; Foley and McColl have been at it since 1988. All four men represent an old tradition of English comedy distinguished more by cheerfulness than by wit.

Morecambe and Wise came out of English vaudeville, music hall, and pantomime, a tradition that usually left Americans stone-faced. It was only with *The Goon Show* that British humor began to connect with the American funny bone, when comedians such as Spike Milligan and Peter Sellers filtered the breezy intelligence of Evelyn Waugh and P. G. Wodehouse through the wacky extremism of Sid Caesar and Jerry Lewis. Then the Monty Python crew came along and elevated this blend of literate burlesque to the level of verbal and visual surrealism, making London the comic capital of the world and changing the nature of British comedy for all time.

Or so one thought until the appearance of *The Play What I Wrote*, which is an unblushing reversion to the old style. The only thing remaining from the Python revolution is the Department of Silly Walks, excellently executed by the rubber-legged Foley. Under Kenneth Branagh's modestly insinuating direction, Foley and McColl, abetted by the energetic Toby Jones, uncork a popgun fusillade of hoary jokes that wore beards in the days of Morecambe and Wise. ("Her teeth are like stars—they come out at night.") The odd thing is how curiously endearing this comedy can be, and how happy the audience is to be wrapped in its warm embrace.

The style of humor is established from the start, when, following the usual recorded announcement about the dire fate awaiting those who don't turn off their cell phones, Toby Jones walks in front of the curtain with a harmonica, hears his phone ring, and drops dead from an arrow in his back. Similar fake props—sunflowers that squirt water in your face, breakaway suits—play a large role in what follows. Sean and Hamish

are first seen together in a vertical bed, their pillows pasted to their heads. Hamish has written a play set in the French Revolution—"I am in France and parts of me are revolting"—about "a tight squeeze for the Scarlet Pimple." While waiting for Sir Ian McKellen to star in it, he is passing the time manufacturing similar atrocious puns.

The mention of McKellen is only the first of several references to living personages, climaxing in the appearance of a celebrity "mystery guest" each evening to join the act. Also schlepped on stage (and impersonated by the chameleon-like Jones) are Gerald Schoenfeld of the Shubert Organization (who prefers traditional British classics like *An Ideal Husband*) and a visitor from another vintage comedy age named Mike Tickle (aka Mike Nichols), who is trying to persuade the pair to bring their act to America. Hamish says he will come only if he is allowed to stage the play what he wrote about the French Revolution.

The Pirandellian implications of this "plot," not to mention of two English comedians playing themselves while impersonating Morecambe and Wise, are not very deeply explored. Sean and Hamish are much more preoccupied with demonstrating the

infinite elasticity and ambiguity of the English language, and its capacity for multiple scatological meanings ("You don't want to get on the wrong side of me. I had beans for breakfast"). The blond, balding Sean, who behaves like a loony Bill Irwin, and the dark, smiling Hamish, who resembles a relentlessly cheerful Dudley Moore, have apparently decided that audiences will be satisfied with a cascade of puns, quibbles, and double entendres, however many are destined to miss their mark. What's more, they seem to be right. Gags like "Everyone wants to see my big opening" and "My mother-in-law has been in the continent for several weeks now" ("Has she tried bananas?") are as conscientiously tacky as Alice Power's florid set and garish costumes. What makes them funny is the absolute conviction of the comics and the conspiratorial way in which they manage to engage the audience. Watching Sean, Hamish, and Toby all falling off a wall backwards while singing "Moonlight Becomes You," or performing a lavish Carmen Miranda dance number in huge fruit headdresses, is to be re-introduced to a pre-9/11 world of comic innocence.

In the second part, the mystery guest finally arrives—on the night I saw the show

Watergate

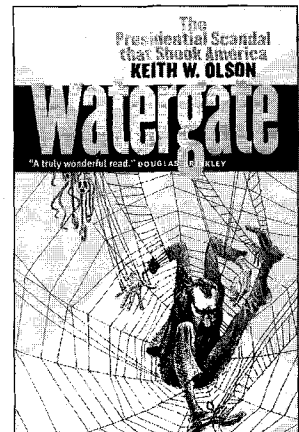
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Keith W. Olson

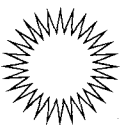
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it was a splendidly relaxed Alan Alda, "from that potato play... *Mash*." Following a few exchanges regarding Alda's inexperience in comedy and long career, Hamish gets the opportunity to stage his French Revolutionary opus. In the most elaborate setting of the evening, all the actors are locked in a dungeon. ("What are you in for?" "Bad acting.") While Sean is having his arms stretched on a rack, Hamish is doubling as the Scarlet Pimple. As for Alda, he gets the opportunity to mangle Sidney Carton's death speech from *A Tale of Two Cities* before being having his head cut off. The final scene finds Sean and Hamish back in bed, singing together to guitar accompaniment as snow falls onstage. It is a moment at the same time funny, kitschy, and touching, like the rest of this peculiarly engaging show.

Another British import that recently appeared in New York is Jonathan Miller's production of Mozart's **COSÌ FAN TUTTE**. Miller has treated the piece like a chamber opera, leaving the chorus offstage and focusing primarily on the six principals. He has also updated the work to the present time, introducing such modernisms as cell phones, computers, and a CNN reporter interviewing Guglielmo and Ferrando when they go off to war, and, when they return in disguise, dressing the protagonists in a variety of contemporary clothes, including heavy metal T-shirts, biker jackets, and torn jeans.

Updating opera is usually a gimmicky substitute for investigating it properly, a device Miller has been loath to use in the past. In this production of *Così* (his fifth), it mainly works, partly because the theme of sexual inconstancy is timeless, partly because the gorgeous white sets by Anne Patterson, like her lovely clothes, abstract the period of the piece somewhere between baroque and contemporary. A large upstage mirror, which functions like a magnet, helps to underline the essential narcissism of the four faithless lovers, a quality they share regardless of their emotional state.

The great theme of Lorenzo Da Ponte, Mozart's librettist, is the overwhelming power of sexual desire, whether in adolescents (Cherubino) or adults (Don Giovanni). Here that theme gets its most exhaustive expression. It is the theory of Don Alfonso, Da Ponte's philosopher of the boudoir, that all women are basically unfaithful, and the opera provides the QED. Since *Così* is built around two pairs of lovers who are set up to be disillusioned and a pair of cynics who help to disabuse

them of their chivalric ideals, the action is bound to seem a little schematic. But if you compare Da Ponte's treatment of infidelity with that of, say, his contemporary Marivaux in *La Dispute*, there is no question who is the greater dramatist.

And, of course, Da Ponte had the advantage of a great collaborator. For an opera implying that romantic love is a sham—a lust of the blood and a permission of the will—Mozart managed to compose some of the most ravishing love music ever written. And

the company that performs it here, particularly Thomas Allen as the sardonic, bored Don Alfonso and Alexandra Deshorties as a slender, ash-gray Fiordiligi wrestling with her own wayward passions, are all immensely appealing. At the end, instead of reconciling the wounded lovers, Miller has them stalk off in different directions—an interpolation, to be sure, but one that heightens Da Ponte's affinities with such jaded contemporaries as Choderlos de Laclos and the Marquis de Sade. ■

Gordon S. Wood Sale of the Century

A WILDERNESS SO IMMENSE:
THE LOUISIANA PURCHASE
AND THE DESTINY OF AMERICA
By Jon Kukla
(Alfred A. Knopf, 430 pp., \$30)

FIFTY YEARS AGO, ON THE OCCASION of the sesquicentennial celebration of the Louisiana Purchase of 1803, the noted historian Bernard DeVoto declared that "no event in all American history—not the Civil War, not the Declaration of Independence, not even the signing of the Constitution—was more important" than America's acquisition of the Louisiana territory. With this purchase of nine hundred thousand square miles of western land, the United States had more than doubled its size and had become a continent-wide nation. Despite his enthusiasm for the purchase, however, DeVoto knew that something was missing from his analysis. "However it may be put," he wrote, the story of the Louisiana Purchase was "still too momentous to be understood." In 1953, DeVoto seems to have thought himself still too close in time to the event to comprehend it properly.

Now, fifty years later, on the occasion of the two hundredth anniversary of the Louisiana Purchase, Jon Kukla believes that we are better positioned to understand the significance of this momentous event. He has set out to tell the story of the purchase in what he thinks to be the fullest manner possible. Like the Mississippi River fed by its many tributaries, his

account of the purchase brings together "stories from Paris, Madrid, New Orleans, New York, Kentucky, and Haiti," he writes, "that finally converged in the monumental events of 1803." The result is not an original account, but it is surely as exciting and readable a narrative of the Louisiana Purchase as we are likely to get in the foreseeable future.

Kukla's book is good old-fashioned history-storytelling in the Henry Adams tradition. Indeed, Kukla emulates Adams's great history of the Jefferson and Madison administrations in several ways. Both he and Adams focus almost exclusively on high politics and revel in detailed and often extraneous descriptions of the principal characters; both describe, for example, Carlos IV of Spain's passion for hunting. Both cast the widest possible narrative net over all the political and diplomatic maneuverings of four nations—Spain, France, Great Britain, and the young republic of the United States. And both delight in dry understatement marked by nice thrusts of irony. Sometimes Kukla's thrusts can even be more biting than Adams's—as when he describes the reception the Americans gave Diego de Gardoqui, the Spanish minister to the United States in the 1780s, who came "ready to dine, dance, drink, share his cigars—and listen and learn. For their part," writes Kukla, "American politicians responded to Gardoqui's hospitality and charm with amazing candor, especially in private conversations. The Americans saved their duplicity for one another." At other times, though, Kukla lets his passion for imagery run away from him, as when he describes the Louisiana Purchase as sending

Gordon S. Wood is university professor and professor of history at Brown University.

"the big red playground ball of separatism bouncing once again through the adolescent republic." That kind of imagery can interrupt any narrative.

Kukla begins his story in the 1780s with Spain's initial efforts to control the Mississippi outlet to the Gulf of Mexico, and he concludes it with the transcontinental treaty between Spain and the United States in 1819 that gave East and West Florida to the United States and set the northern and southern boundaries of the Louisiana Purchase. In between Kukla presents a remarkable story rich in entertaining anecdotes, colorful characters, and unpredictable contingencies, a story so remarkable and so apparently contingency-ridden that its outcome seems almost as unpredictable and thus as providential as we Americans later came to believe it was. In fact, as Adams admitted and Kukla implies, Louisiana was probably destined to become part of the United States regardless of what went on in the White House, the halls of Congress, or the courts of Europe—regardless, in other words, of all the events of high politics and diplomacy that both Adams and Kukla painstakingly describe. The extraordinary growth and movement of the American people westward would have seen to that.

THE UNITED STATES IN THE 1780s was anything but the continental power that it was later to become. To be sure, the new nation owned most of the territory east of the Mississippi, but the European powers of Britain and Spain still existed on the country's flanks; indeed, in the Northwest Britain continued to occupy military posts in territory that legally belonged to the United States. But for most Americans eager to move into the lands west of the Appalachians, the Spanish presence in the Southwest was the more immediate problem. The treaty with Britain recognizing American independence in 1783 had granted the southern boundary of the new republic at the thirty-first parallel, which is the present northern border of Florida. In its separate treaty with Spain, however, Britain, having held Florida since 1763, now returned it to Spain with no boundary specified. Consequently, Spain in the 1780s claimed a boundary one hundred miles north of the thirty-first parallel, up to the Yazoo River, which included much of the present states of Mississippi and Alabama. In addition, Spain controlled not only all the immense wilderness west of the Mississippi but, more important, New Orleans and access to the Gulf of Mexico. In other

words, says Kukla, the Bourbon monarchy of Spain "commanded the single most strategic point between the Appalachians and the Rocky Mountains."

In 1762, France had ceded New Orleans and the Louisiana territory to Spain as payment for Spain's allying itself with France in the Seven Years War against Great Britain. Spain welcomed this territory not because it had any ambitions to populate it or to make it profitable, but simply because it wanted to use it as a barrier to protect the silver mines of Mexico from the aggressive Anglo-American colonists to the north. Spanish officials saw only too clearly that every American who crossed the Appalachian Mountains and settled along the Ohio River and its tributaries weakened this territorial buffer. If these western settlers could not move their produce down the Mississippi to the Gulf of Mexico, however, they would have no reason to keep crossing the Appalachians into Kentucky and Tennessee. With just this aim in mind, Spain closed the mouth of the Mississippi to American traders in 1784 and created a crisis for the new republic.

The Spanish minister Diego de Gardoqui grasped that not all Americans cared about the fate of the western settlers; indeed, as Kukla puts it, "he discovered that for the right price, there were men willing to sell the interests of Kentucky frontiersmen and their southern friends down the river." These were New England mercantile conservatives known as the Essex Junto, who were willing to flirt with separating from the Confederation and establishing a commercial treaty with Spain. Although the Confederation Congress had instructed its foreign secretary John Jay not to surrender America's right to navigate the Mississippi in his negotiations with the Spanish minister, Jay thought that giving up that right for twenty-five or thirty years in return for having access to Spanish markets was very attractive; and in 1786 he was willing to connive with the New England separatists to get it. But Southern opposition led by James Monroe and Charles Pinckney prevented the nine-state approval that would be needed for a treaty, and the scheme failed. Still, as Kukla points out, "the Jay-Gardoqui negotiations revealed attitudes toward the Mississippi River and the west that shaped the events of the next decade and the subsequent history of North America—jealous hostility from New England, competitive neglect from the middle states, expansive hopes from the south, and impatient frustration in Kentucky and the Ohio Country."

In fact, that frustration among the

western settlers led to the beginnings of what came to be called "the Spanish Conspiracy," which involved the Spanish government in efforts to separate Kentucky and the western settlers from the United States. To further its aims, Spain enlisted General James Wilkinson, who eventually became commander-in-chief of the American Army, as a paid agent of its government. Wilkinson secretly swore allegiance to the Spanish crown and for fifteen years received \$2,000 per year as Agent 13 of the Spanish government. In the late 1780s, "Spain bought General James Wilkinson as a stool pigeon and a spoiler," Kukla writes. "In the years ahead their investment paid for itself many times over." Wilkinson ended up collaborating with Aaron Burr during the former vice president's western adventures in 1806 and 1807, but he turned on Burr before the conspiracy came to anything. Perhaps the most unscrupulous official in all of American history, Wilkinson is only one of the many characters that Kukla takes the time to describe and bring to life in his fascinating story.

IN 1791, THE IDEALS OF LIBERTY and equality coming out of the French Revolution spread across the Atlantic to the rich French sugar colony of St. Domingue and inspired a great and bloody slave revolt that lasted a dozen years. Before this rebellion ended in 1804 with the establishment of the republic of Haiti, thousands of refugees, both whites and free and enslaved blacks, had fled to other Caribbean islands and to cities in North America, including New Orleans. With all these French refugees flooding into New Orleans, Spanish officials became increasingly apprehensive that revolutionary sentiments might spread to Louisiana. After all, most of the six thousand people in New Orleans were French, and Spanish military authority in the colony was notoriously weak.

Indeed, the Spanish authorities in Louisiana were so weak and so fearful of American filibustering activities, especially those threatened by George Rogers Clark of Kentucky, that they finally realized that they had to come to terms with the United States in the west or else lose everything. Lurking in the background was the possibility that the United States might actually form an alliance with Great Britain and threaten the entire Spanish empire. Accordingly, in 1795 Spain signed the Treaty of San Lorenzo with the American minister in Madrid, Thomas Pinckney, the cousin of Charles Pinckney, who had attacked Jay's plans in 1786 to sell out the westerners. In this treaty Spain re-

versed its policy. It now recognized America's boundary claims in the Southwest and granted to American traders the right to navigate the Mississippi.

Perhaps Spain was postponing the inevitable with this treaty. Jefferson and other Americans believed that Spain's hold on its North American empire was so weak that it was only a matter of time before the various pieces of that empire—New Orleans, the Floridas, maybe even Cuba—fell like ripe fruit into American hands. America really did not have to do anything but wait and let its phenomenal demographic growth and movement take care of things. The Spanish empire in North America had very few people, and sooner or later Americans such as Jefferson thought that it would be overrun by the burgeoning American population. Spanish officials were well aware of these demographic predictions and became more and more fearful of American encroachment. Suddenly in 1800, under pressure from Napoleon, who was now in charge of the French republic, Spain decided to cede Louisiana back to France. That dominant power would be better able to maintain a barrier between the Americans and the silver mines of Mexico.

IN THE MEANTIME, FRANCE ITSELF, under Napoleon's leadership, had developed a renewed interest in its lost North American empire. Not only could French possession of Louisiana counter British ambitions in Canada, but, more important, Louisiana could become a dumping ground for French malcontents and a source for supplying the lucrative French sugar islands in the Caribbean, especially St. Domingue.

Sugar was important to France. Processed in France and sold throughout Europe, sugar accounted for nearly 20 percent of France's exports. And 70 percent of France's sugar supply came from the colony of St. Domingue. Napoleon knew that if France's imperial ambitions were to be realized, the slave rebellion in St. Domingue led by Toussaint L'Ouverture would have to be put down and the island recovered for France. In 1801, he sent his brother-in-law General Charles Victor Emmanuel Leclerc with an enormous force of forty thousand troops to recover St. Domingue and re-instate the ancien-régime slave system that had made the island so profitable for France.

It was one of the greatest mistakes Napoleon ever made, as he later admitted. By 1802, most of the French troops had been killed or had succumbed to yellow

fever, including Leclerc himself, and only two thousand remained healthy. Before the decade-long carnage ended in 1803, followed by the declaration of Haitian independence on January 1, 1804, some three hundred fifty thousand Haitians of all colors had died, along with as many as sixty thousand French soldiers. "Napoleon's dream of a revived colonial empire in the Caribbean died with them," concludes Kukla. Since Louisiana was supposed to supply goods to St. Domingue, the loss of that rich island suddenly made Louisiana dispensable. Already Napoleon was turning his eyes back toward the east and to a renewal of the war with Great Britain, for which he needed money.

BUT THIS WAS IN THE FUTURE. All that Americans knew in 1802 were rumors that Napoleon had induced Spain to retrocede Louisiana to France, including, as many thought, both East and West Florida. For Americans, and especially for President Jefferson, nothing could have been more alarming. It was one thing for a feeble and decrepit Spain to hold Louisiana—"her possession of the place," said Jefferson, "would hardly be felt by us"; but it was quite another for a dynamic and powerful France to control what Jefferson called "the one single spot" on the globe "the possessor of which is our natural and habitual enemy." Since that one single spot, New Orleans, was fast becoming the outlet for the produce of more than half of America's inhabitants, it would become, in French hands, "a point of eternal friction with us." Indeed, Jefferson told Robert R. Livingston, the American minister in France, that "the day that France takes possession of New Orleans... seals the union of two nations, who, in conjunction, can maintain exclusive possession of the ocean. From that moment, we must marry ourselves to the British fleet."

For someone like Jefferson, who hated the British with a passion matched by no other American, this was an extraordinary statement, but one that he knew Livingston would pass on to Napoleon and French officials. Jefferson hoped that Napoleon would see the light and realize that an Anglo-American military alliance was not in the interest of France or the United States. If France insisted on taking possession of Louisiana, however, "she might perhaps be willing to look about for arrangements which might reconcile it to our interests. If anything could do this," the crafty president told Livingston in April 1802, "it would be ceding to us the island of New Orleans

and the Floridas." He thought France might be willing to sell these territories for \$6 million, and he sent his good and trusted friend James Monroe to Paris to help Livingston clinch the deal.

In intricate detail Kukla takes us through the complicated negotiations of 1802–1803 in Paris. They led to the signing on April 30, 1803 of a treaty and two conventions, in which the United States purchased from France all of Louisiana for \$15 million. Although Monroe did not arrive in Paris until mid-April, after Livingston had completed much of the negotiations, Kukla rightly makes clear that his contribution to the success of the purchase was as great as that of Livingston. Only Monroe had enough confidence in his intimacy with his fellow Virginians Jefferson and Secretary of State Madison to allow him and Livingston to exceed their instructions and pay \$15 million for all of Louisiana. "In short," concludes Kukla, "Robert Livingston made the deal and James Monroe saved it." When all the costs of the deal were in, it came to about four cents an acre.

WHEN HE LEARNED OF THE acquisition, Jefferson was ecstatic. "It is something larger than the whole U.S.," he exclaimed, "probably containing five hundred million acres." Not only did the acquisition of Louisiana fulfill the president's greatest dream of having sufficient land for generations of yeoman farmers to come, his "chosen people of God," but it also "removes from us the greatest source of danger to peace." Neither France nor Britain could now threaten New Orleans and America's Mississippi outlet to the sea. The fact that the Floridas remained with Spain was of little concern, "because," said Jefferson, "we think they cannot fail to fall in our hands."

Most of the Federalists, Jefferson's opponents, were aghast at the purchase. Louisiana, declared Fisher Ames of Massachusetts, was "a great waste, a wilderness unpeopled with any beings except wolves and wandering Indians." He thought the deal was a disaster. "We are to spend money of which we have too little for land of which we already have too much." It was simply a device by which "Imperial Virginia" could spread its slaveholding population westward in order to remain "arbitress" of the whole nation. Although Alexander Hamilton favored the purchase—without granting Jefferson any credit for it—he was worried about what the addition of such a great expanse of territory would mean for the

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Two peoples, the Palestinians and the Israeli Jews living side by side in peace. The "two-state solution" has been proposed for decades to terminate the increasingly violent Arab-Israeli conflict. It is now being resurrected as the "Road Map," sponsored by the "quartet," consisting of the United States, Russia, the European Union, and the United Nations.

What are the facts?

A false premise: The basic premise, that the "Palestinians" need and deserve a state, is false. Because there are no such people as the "Palestinians," and before the creation of the State of Israel in 1948, nobody had ever heard of them. Until Jewish immigration to Palestine began, the country was sparsely settled, inhabited mostly by roving Bedouins. The industry and prosperity, the agricultural development, and modern infrastructure brought by the Jews proved an irresistible magnet for the Arabs from the surrounding regions.

The "two-state solution" has been tried before. Its most recent incarnation was the Oslo Accord, a detailed and elaborate plan, at the end of which a "Palestinian" state was envisioned. Israel, foolishly having acquiesced to the return of Yasser Arafat and his fellow thugs into the country, meticulously adhered to every point of that agreement, and in good faith turned big chunks of its country over to the control of the so-called "Palestinian Authority."

All the "Palestinians" had to do in return for this generosity, unprecedented in world history, was to renounce violence. But the "Palestinians," with the enthusiastic support of virtually all of the Arab states and of the Iranians, methodically violated even that modest requirement. They are armed to the teeth and continue to engage in bloody and violent struggle. They have caused untold havoc – close to 1,000 Israeli Jews killed and many more seriously wounded, just in the last two years.

The members of the "quartet" have taken it upon themselves to decide the destiny of Israel, without any consultation with Israel itself. Of its four members, only the United States can be considered friendly toward Israel. But even our country, sad to say, seems to consider sacrificing Israel in the vain hope of currying favor with

the Arabs and the Moslems of the world to assuage their rage and anger in the wake of our war with Iraq.

Implacable hostility: The United Nations are inexorably hostile to Israel, beginning with the infamous resolution that Zionism equals racism. The European Union – unable to shed its centuries-old poison of anti-Semitism and in order to appease an ever-increasing Moslem minority, has cloaked its antagonism toward the Jews into the more acceptable anti-Israelism. Russia, despite its bloody problems with its own Moslems, having killed thousands in Chechnya, but with an eye on the billions of dollars of potential profit from the

Arab nations, continues to be steadfast in its opposition to Israel.

At first blush, the "two-state solution" would seem to be a reasonable one: Two states for two peoples. But there are no two peoples; there is only tiny Israel – smaller than Lake

Michigan – opposed by the vast array of implacably hostile Arabs – twenty-two states with over 250 million people – who want to carve a "Palestinian" state out of Israel's heartland. And the Arabs make no secret that that has only one single-minded purpose: to serve as a springboard for the final assault against Israel and its destruction – once and for all.

The world is fixated on creating a state for the "Palestinians," a non-existing people. Oddly, the world and the U.N. do not show any interest for real peoples, such as the Kurds, who have been languishing for centuries under the yoke of four different nations; for the Basques, whose struggle for freedom from France and Spain finds little sympathy; or for the Tibetans, who have suffered for decades under the brutality of the Chinese. And the United Nations has never acted on behalf of the suppressed Berbers in North Africa or concerned itself with the terrible fate of the Sudanese Christians. No, it is only the "Palestinians" who engage the attention of the world body.

**"No nation can be expected to enter into
a suicide pact. Therefore...
there will be no "two-state solution!"**

The failure of the Oslo Accord and the bloody and seemingly never-ending intifada have proved that the entire Arab world and the Iranians have only one foreign policy goal, and that is the destruction of Israel. U.S. generals know and Israeli generals know that Israel, without Judea/Samaria (the "West Bank"), is indefensible. The Arabs don't care about a twenty-third Arab state. They want the destruction of Israel. With the Arabs dominating the Judean heights and with that the ability to cut Israel in two at its narrow 9-mile-wide waist in one armored thrust, the two state so-called "solution" would be the death knell for Israel. It is deplorable that the United States – Israel's best friend by far – would attempt to impose such a "solution" on its staunchest ally and friend and on the only country in that entire area of the world that shares America's democratic and humane ideals and on which our country can count in any contingency. No nation can be expected to enter into a suicide pact. Therefore, regardless of what the "quartet" or anybody else might wish to impose on Israel, there will be no "Palestinian" state, no "two-state solution."

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integrity of the United States. Could the enlarged nation hold together? Could the people of Louisiana, with such differences of culture, religion, and ethnicity, be made "an integral part of the United States," or would the territory have to remain a permanent colony of the United States?

Fearful of the consequences of adding Louisiana to the union, especially since it was composed of so many diverse people, some Federalists revived the idea of breaking away and forming a separate confederacy of New England and New York. But Hamilton's adamant opposition to such a scheme essentially killed it, at least for the time being. "Dismemberment of our Empire," he told one prominent New England Federalist the night before his fatal duel with Aaron Burr in July 1804, offered "no relief to our real Disease; which is DEMOCRACY."

DESPITE JEFFERSON'S GREAT enthusiasm for the purchase, the president hesitated to send the treaty to the Senate for ratification. Being a firm believer in limited government and a strict construction of the Constitution, Jefferson doubted that the federal government had the constitutional right either to acquire foreign territory or, more important, to incorporate it into the union. For seven weeks he worried the issue and tinkered with the idea of amending the Constitution. Only when Livingston and Monroe informed him in August 1803 that Napoleon was having second thoughts about the deal did he reluctantly agree to send the treaty to the Senate without mentioning his constitutional misgivings at all. Better to pass over them in silence, he said, than to attempt to justify the purchase by invoking a broad construction of the Constitution.

Although the Senate complied with Jefferson's wishes, the more unruly and ram-bunctious House of Representatives, which had to implement the treaty, opened up the constitutional issues that Jefferson had hoped to avoid. Faced with their own former rhetoric of states' rights and strict construction, many House Republicans were forced to invoke, as Hamilton had in the 1790s, the "necessary and proper" clause of the Constitution to justify the government's acquisition of Louisiana. Even though the Republicans enjoyed a three-to-one majority in the House, the supporters of the purchase were able to carry their first procedural bill by a margin of only two votes, fifty-nine to fifty-seven. The irony of some Republicans talking like Federalists is cer-

tainly present, as Kukla (following Henry Adams) enjoys emphasizing; but more impressive perhaps is the seriousness with which Jefferson and the other Republicans took their constitutional scruples. Although they wanted this addition of western territory in the worst way, they nevertheless worried and hesitated to the point of almost losing it.

IN ARTICLE THREE OF THE TREATY, the United States committed itself to incorporating the inhabitants of the ceded territory into the union as soon as possible. But most Americans believed that this would not be easy, constitutionally or culturally. Like the Federalists, even Jefferson knew that this new territory comprised people who were quite different from those of the United States in religion, race, and ethnicity. Since these former subjects of France and Spain were accustomed to authoritarian rule and unfamiliar with self-government, "the approach of such a people to liberty," Jefferson said, "must be gradual." Consequently, the president thought that until the people of Louisiana were ready for democracy, America might have to continue to rule them authoritatively. And so, as Kukla points out, the first territorial governor, twenty-nine-year-old William Claiborne, "held nearly dictatorial powers over the Louisiana territory and its populace, whose language he did not speak, and whose society he did not comprehend."

Not surprisingly, Claiborne found dealing with the diversity of the new territory to be his "principal difficulty." Especially difficult to understand for white Americans like Claiborne, used to the black/white, slave/free dichotomy, was the division of Louisiana society into at least three castes—black, free colored, and white. Could the free colored population be armed and participate in the militia? Could they become citizens? Fisher Ames had warned that Louisiana society was simply a "*Gallo-Hispano-Indian omnium gatherum* of savages and adventurers" whose morals could never be "expected to sustain and glorify our republic." Now many Americans were afraid that he may have been right. Louisiana, particularly its principal city at the mouth of the Mississippi, was unlike any other place in America. "Two centuries ago," writes Kukla, "amid a 'gabble of tongues' and an array of ivory, café au lait, copper, and ebony complexions in the streets and markets of New Orleans, a nation that habitually and legally regarded people either as black or white began an encounter with ethnic and

cultural diversity that has been sustained by subsequent expansion and immigration."

ACCORDING TO KUKLA, THE implications of this diversity inherent in the Louisiana Purchase were not as palpable fifty years ago as they are today, and this was what led DeVoto in 1953 to believe that the event was "still too momentous to be understood." We now know diversity, says Kukla, as our parents and grandparents could not know it, and this makes the implications of the Louisiana Purchase all the more meaningful to us. With the acquisition of Louisiana, Kukla observes, "the United States began a long encounter with diversity that has forced us, and should inspire us, to think and to live far differently than the Founders expected." It is time for us to put aside our racial dichotomy, he concludes, and to think of color, race, and ethnicity more as the people of New Orleans in 1803 once did.

It is a powerful peroration, and one well worth pondering in our multicultural world. But given the Louisiana Purchase's presumed importance for the destiny of America, and the fact that Kukla devotes so much of his story to personalities and events only marginally involved in the purchase, one wishes that he had spent some time describing in detail this diverse and complicated society of New Orleans, and the myriad and convoluted ways it dealt with racial and ethnic mixture in the decade leading up to Louisiana's statehood in 1812. Despite the vividness of this narrative of high politics that climaxed with the purchase, the multicultural story of racial assimilation and cultural conflict in early Louisiana supposedly inherent in the destiny of America is largely ignored.

This is too bad, for the story is a fascinating one that is now attracting the interest of many scholars. Not only did the large numbers of Americans moving into Louisiana have to adapt their common law to the European civil law, but they also had to make their way into a multiracial, multi-ethnic, and Catholic-dominated society unlike anyplace else in the United States. Franco-Spanish slavery was different from Anglo-American slavery, and manumission and the slave's right to self-purchase were easier in Franco-Spanish culture, and thus the numbers of free blacks, inter-racial marriages and unions, and people of mixed race were much greater than elsewhere in the American South. In the decades following 1803, Americans tried hard to bring this polyglot society and its permissive interracial mixing into line with the binary racial culture pre-

vailing throughout the rest of America, with varying degrees of success. Given the image of New Orleans in the nineteenth and twentieth centuries as an exotic place of loose morals and rampant miscegenation, there

was not the slightest chance that Americans could have learned something from this multicultural and multiracial society. Today, two hundred years later, perhaps we are ready to be taught. ■

Christopher S. Wood

The Unmodern Modern

THE PREFERENCE FOR THE
PRIMITIVE: EPISODES IN THE
HISTORY OF WESTERN TASTE
AND ART

By E.H. Gombrich
(Phaidon Press, 324 pp., \$59.95)

PERHAPS NO SCHOLAR IN ANY field has ever enjoyed a wider readership than Ernst Gombrich. The latest catalogue of books from Electa, the international art publisher based in Milan, is organized by categories, such as "Painting in Italy," "Painting in Europe," "Dictionaries of Art," "Modern Architects," and so on; but embedded among all the general rubrics is the name "Ernst H. Gombrich," a category in his own right. *The Story of Art*, which appeared in 1950, a book written for teenagers but read mostly by adults, has been translated into twenty-nine languages. Gombrich had a gift for plain prose and lucid exposition—a dangerous gift, for he tended to oversimplify. But he was much more than a popular writer. He published many dozens of books and articles on Italian Renaissance painting, and the history of aesthetics and art theory, and art and the psychology of perception—many of them seminal texts that set the course for future research. "Professor Gombrich has paid his dues!," a teacher of mine, chaperoning Gombrich into an art museum, gallantly protested when an official tried to extract the admission fee from the great scholar.

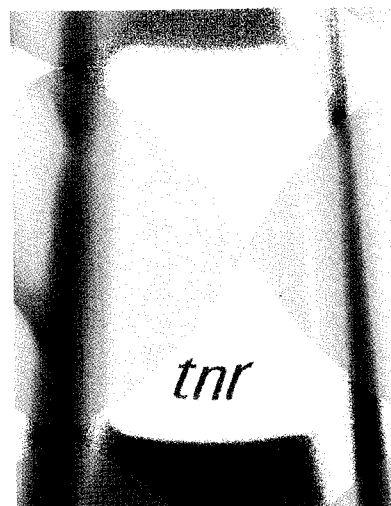
The miracle of Gombrich was his prose style. He persuaded his readers with reassuring sequences of confident but relaxed remarks, tuned by a keen ear for syntax and idiom and sauced with wit. Of course, there is nothing common about common sense. The authority of Gombrich's verbal plain-dealing was a brilliant illusion. It is

Christopher S. Wood is a professor of art history at Yale University.

astonishing that a non-native speaker of English should have been able to pick up so quickly the rhythms of the language. Gombrich told of a ride on a London bus with his publisher Bela Horovitz, the founder of Phaidon Press, at a time when they "had both begun to discover the pitfalls and powers of English prose, and he recommended Bacon's essays to me, while I drew his attention to David Hume's."

Gombrich came to London from Vienna in 1936, at the age of twenty-seven. He found a post at the Warburg Institute, the new research center built around the famous interdisciplinary library of Aby Warburg, which had been packed into six hundred crates and shipped from Hamburg to London in December 1933 to escape the Nazi bonfires. Except for the war years, when he worked for the BBC Monitoring Service, Gombrich spent his whole career at the Warburg Institute. From 1959 until his retirement in 1976, he was its director.

Gombrich brought Germanic *Kunstwissenschaft*—art historical scholarship grounded in philosophy and aesthetics—to Britain. In Germany, Austria, and Switzerland, art history had been taught at the universities since the 1840s. But not until 1932, with the founding of the Courtauld Institute of Art, was it possible to earn an advanced degree in art history in the United Kingdom. Oxford did not name its first professor of art history until 1955. Art historical research in Britain had been mostly pursued by museum curators and private scholars, or sponsored by dealers and collectors interested in settling the value of a picture or a drawing. Gombrich intellectualized British art history. In his writings on Renaissance art, he did not trouble himself with attributions or chronologies. Instead he made a place for art within a history of ideas. Most influential and original were his reflections on representation and the psychology of pictorial illusion. In *Art and Illusion* (1960), Gombrich argued that



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Western art history was built around a constant oscillation between "making," representation according to conventional schemas, and "matching," critical adjustment of the schema on the basis of comparison with perception. Perception could not function at all, he had learned from experimental psychology, without such schemas and categories. All art, Gombrich announced, was "conceptual" art.

In the 1960s and 1970s, Gombrich dominated art history in Britain. His faith in the natural sciences suited the English and corroborated their mistrust of German metaphysical philosophy. Gombrich agreed with his friend Karl Popper that Hegel's conception of history as the progressive disclosure of Spirit brought us all nothing but trouble. Gombrich was interested in experimental psychology, but not in the ideas of Freud. In fact, Gombrich seems not to have admired any of the more abstract thinkers of the last two centuries. His inquiries into the psychology of perception and the psychology of taste bring us back instead to the Enlightenment, to the hard-edged inquiries of Locke or Hume. With his skepticism, his grumpy humor, and his bluff tendency to dismiss anything that he did not immediately understand as cant or nonsense, Gombrich was the Dr. Johnson of art history.

American intellectuals, by contrast, from Ralph Waldo Emerson forward, have tended to have a greater tolerance for cant. Metaphysics, the quest for meaning, and the Nietzschean trust in the dark truths of art have traditionally found more of a foothold in this country than in Britain. One need only consider the largely hospitable reception of modern French and German thinkers—Foucault, Barthes, Derrida, Gadamer, Adorno, Habermas—in American universities. For American art historians, therefore, Gombrich has never been quite as crucial as he is for the British.

Indeed, it is possible that one cannot speak at all about art without some tolerance for cant. The appeal of a poem or a painting is an imponderable mystery, which will not yield to the instruments of common sense. One often has the sense that Gombrich underrated this mystery. He did not know what to make of modern art, that is, painting and sculpture after Impression-

ism. His model of art history as the pursuit of perceptual illusion simply breaks down in the late nineteenth and early twentieth centuries. And Gombrich had little to say about the deeper drives that compel people to make art, to look at art, to possess art.

All the shortcomings of Gombrich's art history spill out, unfortunately, in his last book, *The Preference for the Primitive*, which has appeared a year after his death at the age of ninety-two. Gombrich himself saw the text into press; this is not a posthumous compilation. His contempt for modern art and his impatience with abstract thought emerge in such high relief that we can only

a progressive mastery of the technology of pictorial illusion, he has difficulty explaining why artists at some moments have chosen to move the other way, to revert to less accomplished representational modes. This book is an attempt to make sense of this perverse rejection of the achievements of civilization. Gombrich compares advanced mimetic art to the technology of flying. To draw in perspective is to overcome a natural, "gravitational" pull back to the childlike devices of the stick figure, the base line, and the decorative filling of the picture surface. Why would we ever again crawl like infants once we have been taught by the great masters of the Renaissance how to fly?

But the history of art reveals that many artists have indeed preferred to crawl. Already in the eighteenth century, when painters were still cowed by the lofty ideal style that was established by Raphael and perpetuated by the Carracci, collectors and connoisseurs were turning their attention to the so-called "primitives," the masters of the late Middle Ages, with all their clumsy charm. The early painters had "a stiff, lame manner," in the words of the English connoisseur Jonathan Richardson. But "this bad style," Richardson concedes, "had something manly, and vigorous; whereas in the decay, whether after the happy age of Raffaele, or that of Annibale [Carracci], one sees an effeminate, languid air." Later in the century Goethe praised the sinewy strength of the cathedral of Strasbourg, which was an affront to classically trained eyes. "Art is creative long before it is beautiful," he argued, "indeed often more true and more great than when beautiful."

In the early nineteenth century, artists themselves began to defy the classical imperative and to revive the long-obsolete styles of the Middle Ages. The Nazarenes, a clan of German painters living in Rome, found in medieval frescoes the virtues of stillness, linear clarity, and flat primary colors. The Pre-Raphaelites in England rediscovered the hallucinatory detail of fifteenth-century Flemish panel painting. The Neo-Medievalists strove for simplicity, sweetness, naïveté, piety. Through Byzantine, Islamic, and Japanese art, later nineteenth-century architects and painters



COURTESY NATIONAL PORTRAIT GALLERY, LONDON

R. B. KITAJ, *Sir Ernst Gombrich*, 1986

think of this book as a kind of parting shot. Certainly he was sharp and irritable until the end. (I had the chance to speak with him at length in 1996, when he was eighty-seven, and was taken aback by the agility of his wit and the precision of his bibliographical memory.) With *The Preference for the Primitive*, Gombrich joins an exceedingly small company of nonagenarian authors: Bertrand Russell and Ernst Jünger, for instance, but also the tragedian Sophocles, who, we are told by the satirist Lucian, was put on trial for feeble-mindedness in his nineties. To exonerate himself, he read aloud to the jury his last play, *Oedipus at Colonus*.

Since Gombrich tells the story of art as

re-discovered the virtues of decorative flatness, repetition, and abstraction.

GOMBRICH NARRATES THESE enchanting chapters in the history of taste with his usual clarity and ear for the eloquent quotation. But in the early twentieth century, when the "preference" for the primitive flares up into a full-scale rebellion against mimetic art, Gombrich begins to flail. In the last chapters of his book, he summarizes with sneering condescension the struggles of Picasso, the German Expressionists, and the Surrealists to revitalize art through engagements with tribal art, folk art, or the art of children or the insane. He regrets the rash and regressive "infantilism" that led such artists to abandon the technology of pictorial mimesis, the refined product of five centuries of experimentation. Why would we wish to return "to earlier stages of development in which we are no longer masters of ourselves"?

Gombrich's mistrust of primitivism, he openly grants, was rooted in his horror of the vulgar and perilous predilection for the archaic, the barbarian, and the *völkisch* that was cultivated in early twentieth-century Germany. He deplored—he remembered very well—the facile pathos of the popular art historians of the 1920s and 1930s who stoked the memory of a vigorous and pious medieval German culture. At the same time, Gombrich concedes that his contempt for the Modernist appreciation of the art of tribal peoples, children, and the insane uncomfortably resembles the National Socialist condemnation of modern art as a perverse threat to public morality, expounded sensationally in the notorious propagandistic exhibition of "Degenerate Art" of 1937. "It is a matter of history," he grants, "that these tendencies of twentieth-century art produced the most violent reactions, particularly in Germany, where modern art was identified with degeneracy. The insanity of these charges need not conceal the fact that many artists of the era longed indeed to express such exceptional states that would inspire and inform their art."

At this point in his narrative Gombrich tempers his argument and switches to an indulgent and resigned tone, smiling forgivingly on the "noisy tomfoolery," the naughty "spoofs," of Dada artists such as Marcel Duchamp, perpetrator of shocking pranks designed to defy taboos and unsettle the bourgeois public. In the wake of World War I, after all, one needed to

have a bit of fun. Gombrich observes optimistically that the taste for the barbarous and the archaic seems finally to be waning in our own time, although what would lead him to say this is a mystery to me. In these pages, and whenever he writes on modern art, Gombrich loses his rhetorical touch. His reassuring catchphrases—"we can hardly be surprised that . . .," "it will probably be clear to the reader that . . ."—suddenly come across as desperately grasping, even menacing. And any reader who takes twentieth-century art at all seriously will feel insulted by Gombrich's patronizing tone.

GOMBRICH OFFERS AN OVERALL explanation for primitivism, a homemade psychological explanation. He found it in a quote from Cicero: "The very things that move our sense most to pleasures and appeal to them most speedily at first are the ones from which we are most quickly estranged by a kind of disgust and surfeit."

We become fatigued, in other words, with perfection and beauty, and we "tend to mobilize our defenses against what is too obviously seductive." With this psychological "law," Gombrich reduces modern art to little more than a series of reflexive, even capricious responses to local circumstances and random challenges. "Certain developments in the history of art," he remarks, "can best be seen as the results of competition, with rivals outbidding each other, leading to the dominance of given aspects and the neglect of others." And near the end of the book he asserts that "we need not describe in detail how the regressive phenomenon in defying taboos escalated in the course of the century."

This is a discouraging approach to the writing of art history. Where does Gombrich's argument go wrong? What might we salvage from this book? I am convinced that the analogy between illusionistic painting and aeronautical engineering is a fallacy. Flying is useful because it collapses distances. It is hard to imagine a civilization willingly renouncing this power. But is mimetic painting permanently useful in the same way? Painted illusions have had their uses: they have re-inforced cultic devotion, generated political spectacle, and described strange animals and plants and distant lands. But in the last century and a half, many of these functions have been taken over by other representational technologies, above all by photography and film. And painters developed a new conception of art that entailed freedom from

any practical or communicational tasks. The twentieth-century artist simply wanted to make things, to fabricate dense artifacts that would mysteriously attract or reorient or even disorient their beholders. The twentieth-century artist might exploit illusionism to generate such effects; but for artists the simulation of perception was now a means to an end, and never again an end in itself.

Gombrich is mistaken if he thinks our civilization has abandoned illusionism. Even mimetic painting still flourishes, especially in the commercial realm. There are many more square yards of high-level illusionistic painting—admittedly not always handmade—on our billboards and cereal boxes than there were in all of Renaissance Italy. What has happened is that art has disengaged itself from the technology of illusionism; or, rather, art insists on the right to engage with illusionism only when it chooses to engage with it. So Gombrich's "story of art," the rise and fall of mimetic painting, turns out to be just a subplot of a larger tale. Since he is unwilling to say what that framing story might be, he can only interpret the Modernist challenge to illusionism as a caprice, an infantile regression, or at best an intriguing experiment.

THIS CONCLUSION IS DOUBLY unfortunate because it prevents Gombrich from taking the full measure of the European engagement with the "primitive." Since the sixteenth century, every European colonial conquest, every technological triumph over nature, and every new refinement in artistic taste has been met by a self-critical primitivist response. Montaigne, in his essay "On Cannibals" in 1580, turned on its head the reflexive European contempt for the barbaric ways of the indigenous peoples of the New World. We call the people of Brazil "wild," wrote Montaigne, as we do those fruits produced by nature without the artifice of agriculture, but it is really those cultivated fruits that we ought to call "wild." For the natural fruits retain their genuine and useful virtues and properties, whereas we Europeans have "debased" those fruits "in adapting them to gratify our corrupted taste." The Brazilians eat their enemies, admittedly. But is that more barbarous, Montaigne asked, than our practices of torture and burning alive?

In 1750, in his *Discourse on the Science and the Arts*, one of the founding manifestos of modernity, Rousseau dismissed the grand achievements of European civilization as a corruption of our original simplicity and a

descent into slavery. "Before art had new molded our behaviors," Rousseau asserted, "and taught our passions to talk an affected language, our manners were indeed rustic, but sincere and natural." He urged the fashionable painters of the day, Carle van Loo and Jean-Baptiste Pierre, simply to drop their brushes and commit no more crimes. We take more delight, Rousseau insisted, in "the simplicity of primitive tastes; it is a beautiful coast decked by the hands of nature, towards which we still turn our eyes, whilst with regret, we find ourselves moving from it." Meanwhile, pastoral poetry from the sixteenth to the eighteenth centuries, remembering the fictional Arcadian shepherds described by Theocritus and Virgil, cast an ironic eye on the sophisticated ways of city and court. The preference for the primitive would take a thousand forms in modernity, from the Romantic cult of wilderness to the ecology movement, from Henry David Thoreau to the Unabomber, from Wordsworth and Coleridge's *Lyrical Ballads* to the American minimalist short story.

Even this briefest of sketches suggests that primitivism is not so much an episode in Western culture as one of its underlying structures. The taste for medieval art that developed in the eighteenth and nineteenth centuries and the absorption with African art that emerged in the early twentieth century belong to this pattern of civilization's self-criticism. These shifts in taste were motivated not by a fatigue with sweet perfection, but by a desire to reconnect with the deepest roots of art-making. The medieval altarpiece and the ritual mask were artifacts that, in their home cultures, had supposedly called forth primordial responses of fear, longing, exhilaration, and piety. Those were exactly the responses that any modern painter was also hoping to elicit—except that the available tools, the Neoclassical tradition and the technique of mimetic painting, suddenly no longer seemed up to the task.

IN *THE PREFERENCE FOR THE PRIMITIVE*, Gombrich is no longer a reliable guide to the subject. So does this last book cast a shadow over his entire scholarly project? Gombrich was a reductionist. He sought the most parsimonious explanation for any phenomenon, and if need be he was content with no explanation at all. He was reluctant to assign ideological content or historical meaning to any episode or achievement in the history of art, or to perceive any shape to history as a whole. Instead he reduced art history to a series

Orpheus

In ascent,
he kicks at pebbles.

He's thinking
he's too young for this.

Is Eurydice *the one?*
What if he finds

a Hellenic blonde . . . all this
stress of Hades:

is she worth the craziness?
So he turns

to check that she *is* hot—
& meets

dark agitation at her mouth,
her perfect, flared nostrils.

FEYZA MAROUF

of responses, in themselves meaningless, to social pressures to conform, or to collective expectations. Kant could only arrive at his idealistic notion of artistic judgment as "disinterested," Gombrich once proposed, because he lived in an isolated milieu and had no "occasion to see the pathetic desire of the socially insecure to 'like' the 'right thing.'" In 1967, in an essay designed to deflate the Italian Renaissance, Gombrich argued that the most pressing concerns of the humanist scholars who revived antiquity were philological and orthographic, and that Renaissance architects were mostly occupied with fussy corrections to local building traditions. Perhaps, he slyly mused, the Renaissance "had its origins not so much in the discovery of man as in the rediscovery of diphthongs."

This approach has enjoyed great success in the study of the history of science. In the 1960s and 1970s, Thomas Kuhn and Paul Feyerabend rewrote the history of scientific progress as a series of arbitrary choices between one paradigm (Gombrich would have said "schema") and another. Both these philosophers of science drew on the work of Gombrich's ally Popper, who was the first to introduce the concept of mere "preference" into intellectual history. These skeptical theories have since generated an entirely new scholarly field, the social history of science, a field that dis-

misses the inevitability of scientific progress and the parade of inspired geniuses, and instead focuses on the sociology and the politics of scientific research.

Not everyone is content to see this approach transferred to the study of art. The artwork and its creator enjoy a protected status in our culture. They are treated as irreducible, inexplicable singularities, by art historians but also by collectors, dealers, and indeed by museumgoers generally. Few are ready to see the work and the artist melt back into the flow of history. Gombrich's reductionism swept aside whole dense tangles of prejudices, received ideas, and wishful thinking about art. It was a disillusioned and pragmatic view, and it offended the elitist and aristocratic myths about art and creativity that for so long contaminated all thinking about Old Master painting. The democratic implications of Gombrich's rationalism should not be underestimated.

Once Gombrich is seen as a materialist and a demystifier, he appears less isolated. He comes to resemble other twentieth-century thinkers who were similarly intent on puncturing complacent and idealistic truisms. Behaviorism shifted psychological research away from the mysteries of consciousness and experience and instead toward objectively observable responses. Structuralism, whether applied to kinship hierarchies or literary texts, holds that "meaning" is a fiction generated by the manipulation of arbitrary switches within a closed system. The field of artificial intelligence demystifies human thought processes and the very notions of subjectivity and interiority. In recent decades there has been a tendency to reduce the great narratives of human history to their concrete psychological elements, or to unmask them as blind struggles for power.

In 1974, Gombrich published a chilling essay called "The Logic of Vanity Fair," in which he argued that art had always been tethered to the vagaries of taste and fashion, idle impulses better understood as forms of competition or "social testing" than as meaningful choices. Styles or aesthetic principles are merely "polarizing issues" that allow people to organize themselves sociologically. I am tempted to say that Gombrich in this nihilistic mode was beginning to sound like Andy Warhol, who in the following year published his own *Philosophy of Andy Warhol (From A to B and Back Again)*. Warhol summed things up this way: "In the '60s everybody got interested in everybody. In the '70s everybody started dropping everybody." This is a way of think-

ing about art history that must have made sense to Gombrich.

Gombrich is best understood as a negative thinker. He was a contrarian, and the aftereffect of his project is a restless, corrosive, and impious mental energy; the impression of an immense critical turbulence that he himself set in motion. Certainly his scholarly work can only be understood as a response, a retort even, to modern art. *Art and Illusion* objected to the idea of the manifest destiny of abstract painting, a common assumption in the 1950s. When Pop Art emerged in the years immediately following the publication of his book, Gombrich must have felt vindicated. Gombrich and Warhol and the Pop artists were all skeptical of the metaphysical pretensions of abstract painting. But Pop Art was not simply re-embracing the mimetic tradition, even when it simulated realistic commercial imagery or news photography. Pop Art was a complicated commentary on the relationship between art and consumer society, and on the difference between art and other forms of communication and expres-

sion. Gombrich's theory of art had failed to predict the future of art, and with each passing decade after 1960 this became ever clearer. His last book was a frustrated protest against this fact.

Looking back at Gombrich's celebrated essay "Meditations on a Hobby Horse," which appeared in 1951, I find that he knew all along what aesthetic primitivism was really aiming at. He was simply pessimistic about the chances of art ever finding its way back to its roots. "That strange precinct we call 'art,'" Gombrich wrote, "is like a hall of mirrors or a whispering gallery. Each form conjures up a thousand memories and after-images. No sooner is an image presented as art than, by this very act, a new frame of reference is created from which it can never escape." Picasso may well have hoped to recover some of the magic of the tribal mask, but the attempt was doomed to failure. Picasso would never re-create what the mask meant to its first creator, for "that way is barred," Gombrich concluded, "by the angel with a flaming sword." ■

But what do people make of Fields today, when grown men are to be seen in every city following their dogs and carrying small plastic bags at the ready, and when something called *The Lizzie McGuire Movie* is bursting out as fulsomely as the actress's blooming bust, which has made the continuation of her kiddie show on the Disney Channel an embarrassment? Perhaps I will be stoned in the letters column, but I think this baggy job with dogs is among the most humiliating sights in this proud, Rummy-toting empire. (Would any man follow a wife, or anyone he was fond of, with such a bag?) As for the blind adulation of children, what can be said except that there seems to be an unstoppable craze on the part of anyone over forty in the United States of Amnesia to behave as if they were fifteen? (Could Warhol have meant—he did his best to show the way—that one day everyone will be fifteen forever?)

Curtis does his best to claim that Fields, while bored by dogs, actually had a soft spot for children. But that is a thankless argument to pursue when one reflects on the immense, abused gravitas—it is nearly Mahlerian—with which Fields just refrains from infanticide in several of his films. (Even the correspondence column of *The New York Times Book Review* has sustained the legend that he was inclined to add gin to Baby Le Roy's milk.) At the very least Fields is a stalwart of the old notion that children should be kept in their place, if only a sufficiently dark and soundproofed hovel can be found. And as I write this, I see the likelihood of being misunderstood by sober citizens (let alone my own children). After all, this is now a land where smoke-free sobriety has taken vicious root and childish sensibilities rule. Worse still, I begin to see and to feel a distinct lack of interest in sex, especially illicit sex, revoltingly masked by the guilty parties with their sly use of that lofty howler "disinterest."

So it is hard to recommend W. C. Fields today in all but whimsical situations. It does occur to me that nearly every household in America would welcome a Bill Fields whose sole job it was to answer those phone calls at strange hours soliciting for this or that. Such a Fields would not simply dismiss the telemarketing intruders; he would engage them in prolonged, learned, and increasingly surreal conversations that would destroy their time and maybe their sanity while keeping the family entertained at dinner (and giving

David Thomson is the author of THE NEW BIOGRAPHICAL DICTIONARY OF FILM (Knopf).

David Thomson Fields of Dreams

W. C. FIELDS: A BIOGRAPHY
by James Curtis
(Alfred A. Knopf, 593 pp., \$35)

AS EARLY AS DECEMBER 1905, here is Bill Fields, aka William Claude Dukenfield, on the road in vaudeville, writing to his wife Hattie. It is so crushing a letter, it seems more fictitious than domestic. You have to wonder at the grim stew of revenge and self-abuse in Hattie that she kept the paper instead of feeding the furnace with it. Perhaps she had thoughts of the law even then.

Dear Wife, Your letter to hand. Wired you \$100 so you won't have to walk the Streets with the boy. Had you answered when you should have you wouldn't have had to wait a minute for your money. . . . I also want to know from time to time how the boy is. Now don't go fooling too much as you may regret it. . . . Love to my boy, Your Husband.

Yes, it is a cruel or callous letter, and it is surely proof of a five-year-old marriage irretrievably broken down. More than that, I think, it is the self-conscious, drawing insult of an artist experimenting with his voice and his character, with talking pictures on no known horizon.

This is the second big book on W. C. Fields in six years, and it wouldn't trouble me if we were only getting started. As a matter of fact, the passage that I have just quoted comes not from James Curtis's new biography, but from Simon Louvish's *Man on the Flying Trapeze*, which appeared in 1997. Don't expect me to take sides: in fact, get ready to shell out for both books, so don't be giving any money away yet to wheedling children, starving savages, or plump pols. Just to establish my liking for Curtis's book, let me note that he trumps Louvish with the discovery that the young Fields stammered. I welcome that news, for it helps us to appreciate the uncommon beauty of Fields's very slow, almightily considered, and flagrantly offensive dismissal of others in words. I mean his amazing talk.

the sullen children some education in the rapture of speaking in sentences).

BUT AS I PREPARED TO REVIEW Curtis's book, I thought to look at a few Fields favorites again—*It's a Gift* (1934) and *You Can't Cheat an Honest Man* (1939). Just reflect for a moment: 1939 and Fields had found the title that exactly conveys the gist of modern Americana in only six words! Merely as a rhythmic caesura, I separated the two films with a bathroom break and whatever television had to offer, which happened to be our president, speaking with that horse-whipped sincerity that he affects. Suddenly I saw the real depth of the dilemma in liking Fields, for there is so much ghastly, aching honesty going around. It's as if the Fields voice, that magnificent trombone anthem to fraudulence, had vanished into thin air. How can today's browbeaten masses go from George W. Bush, or Kevin Spacey (playing one of his good guys!), or Charlie Rose on the edge of a cozy answer, to the constant, brilliant teasing of Fields?

Which is why and how, despite his brilliance as a juggler, a stage clown, and a movie comic, I want to attest that, above all, Fields is a voice and a wordsmith. You may hear him in Beckett and Pinter as easily as in John Cleese and Peter Sellers. For here is man unkind, filled with dismay, boredom, and loathing at the very idea of women, society, and decency. Here is *misanthropus Americanus*, preferring to sit in a thickening fog of tobacco smoke, booze, his own lengthening flatulence, and a little unenergetic pornography. Here is the beast—the defiant enemy of family, sentiment, flag, and happiness; but he is as eloquent as the greatest confidence trickster. He is Huck Finn in the retirement home.

As you may begin to detect, for those of us who love Fields, biography is not exactly what we are crying out for. Any book on the great man is a pretext for reviving the desperate moments of his life, and the sublime ennui with which he faced them. I have to say that Curtis is not as exuberant as Louvish—but maybe that happens to a writer when his publisher elects to call his book “definitive.” And even Curtis acknowledges that it is very hard to be final or conclusive about a subject who so readily bent the truth. People get more or less the biographies that they deserve, or that they have set in motion with their own regard for fact and truth. Curtis knows well enough that Fields did not believe in truth. Louvish leaps at this failing like a fellow sufferer, whereas Curtis tries his best to be polite

with an unfortunate failing. But Louvish gains in the comparison, even if he goes a little overboard at times—you feel his deep urge to be a straight man, setting up Fields's lugubrious punch lines. He knows that he is wrestling with his subject, or trying to steal his juggled Indian clubs in midair. And that is a dangerous sport: you may easily find yourself up in the air, twirling, and then—bang—on the floor. Juggling, for Fields, though he was expert at it, was so often a setup for mishap and disaster.

WHAT ARE WE MEANT TO DO with the idea that Fields left home in Philadelphia when he was twelve or so and became a marauding young gangster in that city? I'm sure that he was difficult and truculent, and I daresay that in the Fields family misunderstanding ruled the stagnant air. But Fields was a tough poet who knew that every boy there ever was has been a marauding gangster (and a rescuing cop) in his dreams. Curtis has a lovely photograph of young Fields at twelve or so, a harsh-tender face, with a hard mouth and faraway eyes, all beneath the flop of nearly white blond hair. He could be the young Billy the Kid, or Rilke. The longer you look at the thug, the more you see the romantic sensibility and the early hopeless loneliness.

This was in the last years of the nineteenth century, when children were expected to get up a chimney and bag the soot. William Claude Dukinfield was born in 1880, from English stock. Curtis is so studious to have located an ancestor named Lord Dukinfield (in Cheshire, no less—was he a cat?), and I think it is too casual of him to leave the matter there. Were the Dukinfields an offshoot of nobility (Fields seems to remember this), or are we expected to believe that “Lord” might have been a Christian name that long ago? But how can any wormed-out discovery of the relations between father and son stand up to this ravishing memoir, which Fields once shared with Ed Sullivan and his newspaper readers:

As someone more eloquent than I has said: “It is a pity that youth is wasted on the very young.” Youth should be reserved for old codgers like me. I'd know how to use it. Kids just squander it. They have no judgment of distance, no change of pace. They want to go roller-skating or ride on a bike. Now you know that is silly, when there are so many worthwhile things to do. As a child I was a brat. A man once said to my father, in our parlor: “I've

never met such a repulsive child as your son. He will probably become a juggler.” At this, my father started sobbing and, as the man turned his back, Pa hit him a terrible blow. When the man fell, from Pa's cowardly blow, I hit him in the face. But although we got him down, truth would not be suppressed. I did become a juggler.

Well, yes, but Fields juggled rather in the way Basil Fawlty ran a hotel. Fields was a man who seemed to lack physical grace, to be tied down in leaden dumps (and to be sniffy about it: he once sneered at Chaplin as “that Goddamn ballet dancer”), who was a world-class juggler: a paradoxical man. With this difference, noted by J. B. Priestley, who saw Fields in the English music halls in the Edwardian era: “And this, I fancy, was the secret of his huge and enchanting drollery—though, oddly enough, it seems to have been missed: that he moved, warily in spite of a hastily assumed air of nonchalant confidence, through a world in which even inanimate objects were hostile, rebellious, menacing, never to be trusted.”

There's the nub of it. Fields was a man who had turned to games—to jugglable things—out of an essential despair over people. But then the balls turned out spooked. The balls in the air were loaded with spin. They were as treacherous as women. Another observer reported that Fields “always talked to his ‘properties.’ He would reprimand a particular ball which had not come to his hand accurately, whip his battered silk hat for not staying on his head . . . mutter weird and unintelligible expletives to his cigar when it missed his mouth.”

From 1898 onward, Fields was in touring variety. For a time, his wife Hattie was a partner in his act. But the birth of their son Claude, and Fields's distaste for being known by just one woman, soon left her at home. He toured America and Britain, Australia and South Africa; he did a royal command performance for King George V; and by 1915 (when he commanded \$400 a week) he was taken on by the Ziegfeld Follies. He actually made a couple of one-reel comedies in the same year, but at that time—it was Chaplin's beginning, too—Fields didn't catch on.

Yet by the mid-1920s he was back in movies, often doing his variety routines, but in *Sally of the Sawdust* doing his best to be patient through D.W. Griffith's passion for the actress Carol Dempster. There were several other silent films for Paramount, some of them now lost. When he did *The Old Army Game*, which co-starred Louise

Brooks, she was quietly amazed at the amount of liquor that he consumed during the work. But the remarkable thing about Fields was how far this famous physical comedian waited on the coming of sound. Beyond that, the marvel of his rare identity was that his own fallibility at juggling ("Am I drunk? Or is the world giddy?") flowered with sound and the chance of placing him in some deplorable but infinite domestic situation. All of a sudden, a clown became a tragedian, or a philosopher.

Like so many movie comedians, Fields became the instrument of studios, in his case Paramount and Universal. He was famously difficult to work with, but in part that was because he had a secure but unshareable idea of how he should work. He never directed himself, and he was generally inclined to ignore those appointed fellows. Yet he was frequently his own writer, working under those melodious pseudonyms that Fields admirers still use in masquerades: Charles Bogle, Mahatma Kane Jeeves (this in *The Bank Dick* in 1940, suggesting that he knew Orson Welles well enough to justify Welles's longing to direct Fields as Mr. Pickwick), and Otis Cribblecoblis.

The work was tough. Fields was on the radio a great deal. (He once asked Charlie McCarthy, a ventriloquist's doll, whether Charlie or the banister got the most splinters when the doll slid down.) He also made a number of short films as well as the features—versions of his classic physical routines. The most famous of his jobs was the chance to replace an unbearably insecure Charles Laughton in David O. Selznick's production of *David Copperfield* in 1934, directed by George Cukor. Though he tried to insinuate a backstory in which Micawber had been a juggler, Fields was so good in the role that it leaves many of us begging for more. Could he have disciplined himself for more Dickens? He had grown up in love with the English author, and he was born only ten years after Dickens's death. And could he have played other "straight" roles? As it was, in the shift from vaudeville to movies, Fields always recognized the need to go beyond routine and into situation.

So many comics, especially those raised in variety or comedy clubs, have great difficulty adjusting to the feature form. They are protected by routines and one-liners. They are lost without a live audience. Yet the charm of Fields is the ease with which he slipped into rural settings and domestic doldrums, to men trapped in backwater and depression. It is not exactly that he acted—he was always patently Fields; but he

found a movie character that begged for story development.

And whereas many comedians date badly—the jokes go stale, the act seems frantically imprisoned in period (this is as true of Chaplin as it is of Groucho Marx or Jerry Lewis)—Fields still seems modern. His rhythms are so unexpected. You can feel other players in the scenes waiting to be guided by him—though Mae West in the disappointing *My Little Chickadee* knows that she can only survive by stepping on his lines. Still, in one scene, as Curtis reports, Fields reduced the crew to hysterics when, piled up with bags, cases, and boxes to carry for her, he still offered her his arm. (Her response was to stick a flower in his mouth!) At his best, Fields could be improvising everything. His pictures are hokey, yes, but their emotional realism is sometimes quite shocking as a result of his daring timing. You sometimes wonder whether he isn't about to walk off and leave the whole damn situation to us.

THE SADNESS WAS PALPABLE, AND the drinking was chronic. On *The Big Broadcast of 1938*, where he and the director Mitchell Leisen fought so much that Leisen had a heart attack, Fields announced that he would retire to his dressing room to work on his lines and came back two hours later soused. In most of his best movies, in fact, he looks much older than his real age, and his nose seems to be spreading across his glum, pulpy face. When he died, on Christmas Day in 1947, he was sixty-seven, but he could have passed for eighty. Death came from cirrhosis of the liver. Near the end, while he was in the hospital, a secretary was smuggling in a case of gin a week.

Fields and Hattie had never been divorced. She turned Catholic; he turned to a series of girlies, but without much affection or excitement. There was an affair with Bessie Poole, and she had a son who used the name Fields. But the wives that Bill Fields needed were those fusspots, scolds, and harpies from his best films, such as Alison Skipworth, Kathleen Howard, and Cora Witherspoon. But then, in a strange scenario, he and Hattie were reunited.

When Fields died, he was worth about \$700,000, but Hattie moved in to contest the will. The grisly process took over a year, and it cries out for a movie treatment in which the helpless ghost of Fields himself is in the room, talking to himself, but able to do nothing to stop or to alleviate the pious vultures picking over his bones. By now, the play is one that Strindberg did not quite have the stomach to write. One poignant

sub-motif would be Fields's longing to keep a \$5,000 legacy for Mabel Clapsaddle, a bank clerk whose name had captivated him.

Once upon a time, the pantheon of screen comics was taken for granted, but I wonder now how many college kids would recognize Harold Lloyd, Harry Langdon, or Buster Keaton. Being black-and-white today is not even charming, and being silent is unthinkable. I'm not even sure that the Marx Brothers are going to "last." So much of their ineane material now seems put there to torture the Groucho who needed more. And yet it is my impression that Fields is doing quite well as a survivor. In my video store there are plenty of Fields titles available. He has been on a stamp. There was a wretched movie biopic (with Rod Steiger), long forgotten. The wisdom now is that Fields cannot be imitated, that the ineffability came from utter strangeness.

There is now this second of two fine books, and, it seems to me, there are Fieldian wrecks all over this finest land there ever was or could be. More than fifty years after his death, thanks to these very fond books, it is not just possible but necessary to say that Fields was far more than a clown or a comic. He was a character in the social landscape, the head of the household reduced to mockery but sublimely enduring because of his own small talk with the fates. As Louise Brooks saw it, though both a drinker and a celebrated drunk, Fields hated bars and parties. Human groups dismayed him. Solitude was his domain. He is that rare comic who responds well to being watched alone. Just don't give him too much time if you hope to take your president and your other leaders seriously. ■

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MAYBE IT WAS THE MORN-
ing last week that TNT
Express set up shop in the
lobby, offering door-to-
door courier service from
Baghdad to anywhere in the world in four
days. Or perhaps it was the announcement
of weekly, \$650 flights to Amman, which
sent scores of Iraq-weary correspondents
scrambling to buy tickets. (The inaugural
flight was scotched at the last minute by ner-
vous Jordanian authorities.) Or it might have
been the opening of the Sheraton Hotel
swimming pool across the street and the
sudden appearance of a handful of bikini-
clad sun-worshippers lying on chaise lounges
poolside. Whatever the case, for the hun-
dred or so journalists who remain hunkered
down at the Palestine Hotel, an earth-toned
early '80s relic towering above the Tigris
River, a change has definitely come over this
place, the first stirrings of postwar normality.

THE PALESTINE HOTEL WAS IN SOME
ways synonymous with the Iraqi war. On
March 17, with the U.S. military preparing
to attack Iraq, Ministry of Information
goons removed correspondents from the
more luxurious Al Rasheed Hotel across the
river and re-based them in this down-at-
the-heels edifice just off Al Fardos Square.
Three weeks later, with fighting raging
throughout the city, a U.S. Army tank shell
slammed a fifteenth-floor balcony at the
Palestine, killing two photographers. Since
then, the Palestine has been improving,
though conditions are still spotty. The
rooms are dingy, the food monotonous, and
a mysterious bacteria in the threadbare car-
pets has given many guests a foot fungus. A
single emergency generator keeps the corri-
dor lights and elevators running during
Baghdad's periodic power outages. Thieves
are ubiquitous: Last week, a French-
Lebanese con man posing as a journalist
helped himself to money and equipment in
a dozen rooms before he was caught in the
act and carried out by American troops.

BUT, DESPITE ALL THIS, THE PALESTINE
also provides a glimpse of the burgeoning
freedoms of postwar Iraq. The lobby has be-
come a meeting place for translator
wannabes, spies, American soldiers, relief
workers, journalists, and diplomats. The

plaza out front is now a thriving souk where
vendors hawk \$3 cans of Amstel Light, \$10
Newsweeks, counterfeit Marlboros, and
sportswear looted from Uday Hussein's Iraqi
Olympic Committee. Then there's the bul-
letin board by the reception desk, covered
with ads for new ventures — "*Iraq Biznet*, first
English-language trade and commerce
monthly" — and more mysterious offerings.
Handwritten messages promise laundry,
cooking, and "other services" from a
"woman in the lobby wearing a black scarf."

IT'S A DRAMATIC CHANGE FROM APRIL
of last year, when I stayed at the Palestine on
my way to attend Saddam Hussein's sixty-
fifth birthday celebration in Tikrit. Back
then, the hotel was a hive of government
agents and informants. Salim Madab Al
Aubaidh, the Palestine's managing director
since 1999, told me that back then Iraqi in-
telligence agents routinely placed listening
devices and TV cameras in the top-floor
panoramic restaurant and pressed the staff
for information about foreign journalists
and businessmen. Al Aubaidh said he came
close to being arrested in the last days of the
war, when the manager of Uday's Youth TV
network—which the Americans had
bombed off the air—burst into his office
and ordered him to turn two of the guest
rooms into a clandestine studio and a broad-
cast facility. "I told him, 'This is dangerous,'
and he said, 'Are you refusing this order?'"
I said, "No, no. This hotel is all yours." Al
Aubaidh said he thwarted the plan by
secretly ordering his technicians to shut
down the hotel's generator and claiming
it had broken.

WITH THE IRAQ STORY ON THE WANE,
most journalists at the Palestine Hotel seem
to be trying to find a way out of the country,
which isn't proving easy. All week, a stream
of people have been visiting Room 302, an
information center staffed by former British
military types—hard-looking men with
Yorkshire accents and arms full of tattoos—
now working for private security companies
such as Centurion and AKE. The unit keeps
tabs on "incidents" on Iraq's highways and
assesses the risks for journalists trying to
leave. The news they offer isn't good. Ban-
dits and carjackers, some of them remnants
of Saddam's fedayeen militias, have turned

the desert road leading west to Jordan and
Syria into a *Mad Max* no-man's-land. During
the first week of May, an Egyptian driver
was shot dead in an ambush near the Syrian
border. Gunmen also wounded a British se-
curity man traveling with a CNN convoy,
fired on the Greek attaché to the European
Union, sprayed an Associated Press crew
riding in an armored car with AK-47 fire,
and set up illegal roadblocks in an attempt
to waylay other convoys. "It's consistently
bad, consistently dangerous," one former of-
ficer told me. "They'll come out of nowhere,
drive behind you, wave their weapons, and
fire at you if you don't stop." The road lead-
ing south to Kuwait is better, but few have
valid entry permits to the kingdom, and the
border guards are turning people back. With
the flights still on hold, the only real option
remains that risky dash west through the
desert.

ONE EVENING LAST WEEK, AFTER THE
scorching Baghdad heat had receded, I
went for a jog in the neighborhood around
the Palestine Hotel. I ran past looted shops,
abandoned fish restaurants, broken pave-
ment, and electrical wires dangling from
tilting poles. Sporadic machine-gun fire
echoed from down the river; 200 yards past
the hotel, a dead horse lay decomposing in
the center of the road, head twisted
grotesquely, body bloated, legs sticking
straight up in rigor mortis. I'd barely gotten
past this malodorous obstacle when a
young man in a green baseball cap sidled up
to me, grinning madly. The combination of
the gunfire and the shattered, deserted
landscape I was running through—perhaps
combined with the fact that Iraqi mental
hospitals had been emptied out weeks ear-
lier and lots of dangerous crazies were on the
streets—made my unlikely jogging partner
seem more than a tad threatening. It didn't
help any when he pulled a silver whistle
from his pocket and began blowing it loudly
at me. I picked up the pace, but he acceler-
ated as well. At last the two U.S. tanks
guarding the Palestine's entrance came
back into view, and I made a dash for the
hotel. A soldier pulled back the concertina
wire and let me through, leaving the mad
jogger standing alone in the road, blowing
his whistle. I stumbled relieved into the
Palestine lobby—what passes for an oasis in
the anarchy of postwar Iraq.

JOSHUA HAMMER

*Joshua Hammer is NEWSWEEK's Jerusalem bu-
reau chief and the author of A SEASON IN BETH-
LEHEM: UNHOLY WAR IN A SACRED PLACE,
to be published in September by the Free Press.*

Special Education Insurance for Schools of Choice

Paul T. Hill is a distinguished visiting fellow at the Hoover Institution; a member of Hoover's Koret Task Force on K-12 Education; and a research professor in the University of Washington's Daniel J. Evans School of Public Affairs.

The education of handicapped children is a major challenge for charter schools. Schools that remain connected to school districts must pay hundreds of dollars per student to support the central office special education unit. Schools that maintain no connection to school districts must pay for whatever services their handicapped students need, including placement in residential facilities costing as much as \$50,000 per pupil.

This sets up a dilemma: **To avoid the financial ruin that could result if a seriously handicapped child were to enroll, many charters stay close to the very districts whose control they hoped to escape.** Further, charters that rely on school districts often get far less than they pay for. Because charter schools hope to avoid labeling children as handicapped, they work hard to solve students' learning problems early. Charters therefore pay a lot for district schools that are careless with the "handicapped" label.

Schools in a voucher system could face the same dilemma. As long as public funding brings an absolute obligation to provide special education services, schools must either affiliate with districts or take huge risks.

Some charter schools are forming special education risk pools, which are good until one school's unexpected costs create havoc with many schools' budgets.

A better solution would be insurance for special education costs. Schools could buy insurance coverage from commercial underwriters, including deductibles for small extra costs and "catastrophic coverage" for the rare instance when a student requires residential placement. A mature insurance program could be loss rated, so that schools with

excellent track records of solving children's problems without applying the "handicapped" label would pay less than schools that use the label carelessly.

A special education insurance program would be good for schools and for children. Schools would know in advance what special education would cost each year—no awful surprises. Students would also benefit from schools' efforts to solve learning problems before they became overwhelming. Children who truly need special services would also benefit because the funding would be guaranteed by insurance.

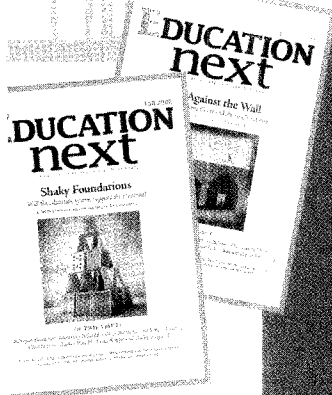
No insurance underwriter has offered such insurance, for two reasons: First, school districts have covered their own costs, largely by robbing other general education accounts to pay for their burgeoning special education offices. Within districts, the managers of special education have had no incentive to control costs, and superintendents are afraid to cross the groups that represent handicapped children. Second, information about individual schools' expenditures has been hidden in district budgets that record costs by function, not by school.

An insurance industry could emerge rapidly, however, if philanthropies offered to support start-up insurance funds and pay excess losses for small pilot projects. Charter and voucher-funded schools could buy insurance for a few hundred dollars per pupil and have their costs adjusted annually on the basis of experience.

This small innovation, which relies more on business entrepreneurship than on policy activism, could make a huge difference in the numbers of groups willing to start schools of choice and in the financial survival of new schools.

— Paul T. Hill

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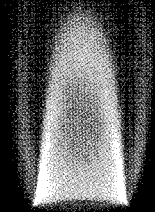
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